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The Solicitors' Journal

[REGISTERED AS A NEWSPAPER.]

VOL. LXXV. No. 42. **Saturday, October 17, 1931.** PRICE 2s.

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VOL. LXXV. **Saturday, October 17, 1931.** No. 42

Current Topics: Royal Marriages—The Cost of Litigation — Other Papers—Husband and Wife—Price Cutting — The Election and the Cause List — A Meal within the meaning of the Act—Breach of Service Agreements: A Problem for British Law Students — Smoke Nuisance from an Artificial Silk Factory 679
Criminal Law and Practice 682
Directors and Conversion 682
Patents and Constitutional Law .. 683
Republication of Testamentary Instruments 684
Concerning Boundary Hedges .. 686
Matrimonial Differences 686
Determination of a Trust by the Usage 687
The Repair of Stiles and Footways .. 689
Disposal of Ineffective Subscriptions 690
Legal Problems arising on Currency Variation 690
Six Sanctions for Arbitrators Awards 691
Nemesis runs Amuck 692
Company Law and Practice 693
A Conveyancer's Diary 694
Landlord and Tenant Notebook .. 695
Our County Court Letter 695
Practice Notes 696
Correspondence 696
In Lighter Vein 697
Reviews 697
Books Received 698
Notes of Cases—
W. T. Lamb & Sons *v.* The Goring Brick Co. Ltd. 698
Points in Practice 699
Obituary 701
Societies 701
The Law Society at Folkestone .. 702
Legal Notes and News 713
Court Papers 714
Stock Exchange Prices of certain Trustee Securities 714

Current Topics.

Royal Marriages.

THE FORMAL consent by the King given at a meeting of the Privy Council last week to the marriage of LADY MAY CAMBRIDGE to Captain HENRY ABEL SMITH, which consent, as the announcement in the *London Gazette* states, "His Majesty has caused to be signified under the Great Seal and to be entered in the books of the Privy Council," is in accordance with the provisions of the Royal Marriage Act, 1772. That measure was due to the annoyance of GEORGE III at certain matrimonial alliances contracted by his brothers of which he did not approve, and the recurrence of the like he was determined to prevent as far as statute law would enable him to do so. Accordingly, a Bill was drawn, it is said by Lord MANSFIELD, which placed restrictions on the marriage of members of the royal house without the consent of the Sovereign. So keen was GEORGE III to ensure the passing of the Bill that, while it was pending, he wrote to Lord NORTH thus: "I expect every nerve to be strained to carry the Bill. It is not a question relating to administration, but personally to myself; therefore I have a right to expect a hearty support from every one in my service, and I shall remember defaulters." By no means was it a popular measure, but, constituted as it was then, Parliament proved subservient to the royal will and passed the Bill. The Act provided that no descendants of GEORGE II (except the issue of princesses married into foreign families) should be capable of contracting matrimony without the King's previous consent, signified under the sign-manual, and declared in Council; any marriage contracted without that consent being null and void. During the progress of the Bill, however, the severity of its provisions was mitigated by a section enabling members of the royal family, above twenty-five years of age, to marry without the King's consent, after having given twelve months' previous notice to the Privy Council, unless in the meantime Parliament should signify disapprobation of the proposed marriage. As Sir ERSKINE MAY says in his "Constitutional History," "the arbitrary character of the Bill was conspicuous," but while this must be conceded, it may be said of the statute that which has been said of many another which has encountered intense opposition during its progress through Parliament, that it has not in fact produced great, or indeed any, hardship.

The Cost of Litigation.

IT IS, no doubt, natural that the cost of litigation should have been the chief topic for discussion at Folkestone, comprising as it did by far the larger part of the President's address, and being the subject of a separate paper read by Mr. H. WILLS CHANDLER (Basingstoke). The debate which ensued after this last paper was read indicates the interest taken in the matter, and we may, perhaps, also refer to our own recent discussions *ante*, pp. 433 and 471, in which we dealt with most of the points discussed at the meeting. In making the suggestion that the county court jurisdiction should be enlarged, the President revealed the interesting fact that a relative of his, a county court judge, tried many cases by consent involving large figures, because the parties had confidence in his ability and judgment, and desired to save the expense and delay of a High Court action. The point, however, is extremely controversial. As Mr. CHANDLER pointed out, the London Chamber of Commerce and the Bar Council disapprove of such extension, and Mr. CHANDLER himself suggests making county court judges district judges of the High Court. "Rationalisation on these lines," he observed, "would bring to the humblest suitor the procedure of the High Court, which in so many respects is quicker and simpler than that of the County Court." Yet the persons who sought the decision of the President's relative deliberately chose the procedure of the county court. The most obvious moral appears to be that the judge who was a kinsman of Mr. MARTINEAU should have been promoted to the High Court. This would have been possible, and Lord BIRKENHEAD did make such a promotion, but the precedent has not been followed. The President also dealt with the question of appeals, and, in ordinary cases, there should certainly be some sort of way of avoiding the possibility of the double appeal, which naturally deters poor litigants, especially against public bodies and Government departments, to which success in a test case may be more important than the sum at issue.

Other Papers.

MR. RUTLEY MOWLL (President of the Coroners' Society of England and Wales) read a paper on "The Effect of Recent Legislation on the Coroner's Court"—largely, of course, dealing with the Coroners (Amendment) Act, 1926, on which we may perhaps refer to our article 71 SOL. J. 381. A matter of some interest discussed was the verdict in running down

cases having fatal results. In a recent case, a jury had returned a verdict of misadventure, but had censured one of the drivers, a pronouncement which, as the Lord Chief Justice observed when it came before him on mandamus, involved a contradiction in terms. Hence the custom to direct juries that they may find negligence not amounting to manslaughter. That obviously points to civil liability, but of course no other tribunal is bound by such a finding. Mr. HAROLD POTTER, Reader in English Law in the University of London, King's College, read a paper on "Theory and Practice in Legal Education," in which he advocated that knowledge of the routine of a solicitor's office should be combined with familiarity with principles of law rather than their specific application in decided cases. If the principles of law are grasped by the young solicitor, he will be able without difficulty to use his books for the statutes and cases on a particular problem. As Mr. POTTER points out, the practitioner who merely learns decisions by heart, but has not grasped their significance, so as to reason from them to undecided issues, may be in some danger of accepting bad titles. Mr. CHARLES L. NORDON, LL.B., discussed the matter of solicitors' accounts, expounding the system which, from many years of experience, he had been led to adopt. No doubt every firm has its own, but the views of one who has so carefully studied the matter must always be of interest. His disapproval of Sir JOHN WITHERS' bill was echoed amongst his critics.

Husband and Wife.

THE LAW of husband and wife is admittedly in an unsatisfactory condition, and two papers were read on diverse aspects of it. Mr. CHARLES BERRY, of Tunbridge Wells, chose his on "The Debts of Married Women." That the married woman who prefers continued luxury rather than the satisfaction of her just debts, even to a degree involving flagrant dishonesty, is treated with undue tenderness by the law is of course now generally recognised. Mr. BERRY suggested that it was illogical to continue their immunity from bankruptcy proceedings. A resolution to apply the bankruptcy law to them accordingly was proposed and carried by a large majority, though one or two dissentients spoke against it. If this were done, downright fraud under the shelter of the restraint on anticipation could be checked by the application of s. 52 of the Bankruptcy Act, 1914. Mrs. APPLEBE, *née* Miss CARRIE MORRISON, advocated the establishment of a Court of Domestic Relations, pointing out that the present law as to separation and maintenance often operated most unfairly "with a garrulous wife in the box, and a tongue-tied husband below the dock, and vice versâ." Perhaps the comment may be made that the "vice versâ" is by far the more unusual case. Since Judge BEN LINDSEY'S experiments in the working of a court of a somewhat similar nature in Colorado (though in its later stages it was concerned with the troubles of the family as distinct from the father and mother) the subject has of course been one of interest to lawyers, and perhaps we may recall our own discussions of it, 72 SOL. J. 670 and 786. Mrs. APPLEBE contemplates "A friendly court," and observes that the present law of divorce is "somewhat of a stumbling-block."

Price Cutting.

THE NEGATIVE and inconclusive findings of the Committee appointed by the Lord Chancellor and the President of the Board of Trade to consider certain trade practices are rather discouraging to those who are convinced from their practical experience that some positive change in the law is required. The terms of the reference were "to consider present trade practices which result in withholding from particular retail traders supplies of goods in which they wish to deal or which prevent the resale of such supplies except upon conditions imposed by the suppliers, and to report whether in their opinion all or any of such practices are detrimental to the public interest, and if so, what alterations in the existing law are necessary to prevent the continuance of such practices." The thoroughness of the Committee's investigations is well vouched for by the chairmanship of Mr. W. A. GREENE, K.C., who, it will be remembered, gave his name to the Committee whose report led to the passing of the Companies Act, 1929. The Committee has found that in the absence of some compelling reason, the ordinary freedom of contract ought not to be withdrawn and that in spite of the disadvantages of the price maintenance system, no public interest would be served by a change in the law. The report stresses that though grievances and hardships may be caused in individual cases by the withholding of supplies, the problem to be dealt with was in reality the much wider one of monopolistic combinations and trusts. The Committee has found that the imposition of conditions as to resale price upon retailers and wholesalers was a widespread and growing practice among manufacturers and that the conditions were commonly enforced by individual or joint boycott. The practice is most prevalent in the book, newspaper, stationery, gramophone and records, motor car and cycle, tobacco and cigarette, confectionery and grocery trades, while the trades for the handling of fashion goods and perishable goods are scarcely affected. The report states that the Committee was impressed by the volume and force of the evidence as to the harmful effects of price cutting upon the public. Price cutters stock the goods affected in order to attract customers to buy other goods and as a result shopkeepers in the neighbourhood of the price cutter cease to stock the goods affected, and as the prosperity of the trade is at stake, price maintenance is justified. The rule that price maintenance agreements are not in restraint of trade was emphatically re-asserted not long ago in *Palmolive Co., Ltd.* v. *Freedman*, 71 SOL. J. 927; [1928] Ch. 264, and the Committee's report strikingly illustrates the English disinclination to interfere with the course of trade, or as JESSEL, M.R., said in *Printing Co.* v. *Sampson*, 19 Eq. 465, "lightly to interfere with the freedom of contract."

The Election and the Cause List.

IT IS, of course, inevitable that the approaching General Election must interfere to some extent with the normal disposal of the cases in the lists. A decided indication of this was apparent when a number of applications for the postponement of actions on that ground were made on the first day of the term. Lord Justice SCRUTTON, after hearing such an application, said that where counsel in appeals were political candidates and there was a consent on both sides to a case standing out, it would be sufficient if an intimation to that effect was handed to his (his lordship's) clerk. In the case of disagreement, however, there must be an application to the court which would decide whether the case should stand out in the interests of counsel. There were, he pointed out, the interests and needs of the clients to be considered, so that it could not be made an invariable rule that cases should stand out. Three of the applications made before Mr. Justice ROWLATT for the postponement of actions in the special and non-jury list were also made on the ground of election claims. In one opposed application his lordship said: "I would not put it off for the convenience of counsel, but it is the election, and in such a case it is always done." The Daily Cause List, in a note, advises solicitors connected with appeals to search the lists in Room 136 to ascertain the position of their cases which may have been altered in consequence of the adjournments rendered necessary by the General Election.

A Meal within the meaning of the Act.

IN THE Licensing Act, 1921, there are two provisions as to the extension of hours for the supply and consumption of

intoxicating liquor at or with a meal. Section 3 provides for an extra hour for supply if the meal is taken in the part of the premises usually set apart for the service of meals, all drinking bars being closed, and s. 5 allows of the consumption of liquor served at a meal on any part of licensed premises or a club within half an hour of the conclusion of the permitted hours. Magistrates considering whether an offence has been committed under the Act may therefore have to determine what the Legislature meant in using the word "meal," for it has given no guidance. Common-sense may, no doubt, help, but hardly at the border-line. Common-sense would indicate that a city banquet of a dozen courses would be a meal for those who took all they were offered at it, and also that the one split pea left at the Equator for little Billee and his friends fell short of it. The problem is to draw the proper line between the two, and may be likened to the question of how many stones make a heap, or what is "visible means of subsistence" within the Vagrancy Act, 1824. The Brighton magistrates have now decided that a sandwich is not a meal within the Act. In 1925 Sir CHARTRES BIRON decided that it was, in a case arising at the Queen's Hotel, Leicester-square (see 89 J.P. (Jo.) 533). And here, again, a sandwich may be, at a coffee stall, a "doorstep," a mouthful of which would involve prolonged conversational suicide, or, at a Mayfair tea, a wisp of bread and tomato which could be swallowed whole. Then there is the personal equation, and for Signor PRIMO CARNERA, for example, a "doorstep" sufficient to choke the dyspeptic might merely blunt the edge of appetite. Perhaps a Divisional Court will hereafter prescribe a sliding scale of so many ounces for a person weighing so many stone. In the case before him, Sir CHARTRES BIRON said that "no ordinary person would walk into a respectable restaurant and pay five shillings for something they did not want merely in order to obtain intoxicating liquor." It is notorious, however, that, at illegal night clubs, people will pay much more than that for drinks. Section 3 of the Act provides that no person shall "consume or be permitted to consume" intoxicating liquor except "at" the meal, which implies that the customer must eat at least sufficient of the food he orders to constitute a statutory meal before or after his drink, and that the licensee commits an offence if he allows the drink to be consumed and the food to be left. The provision in the Act may be of a reasonable nature, but, having regard to the conflicting decisions of magistrates, its vagueness creates difficulty both for police and restaurateurs.

Breach of Service Agreements: A Problem for British Law Students.

AN OCCASIONAL contributor to THE SOLICITORS' JOURNAL, at present holiday-making in Switzerland, sends the following translation of a recent judgment of the Federal Tribunal there upon a matter of frequent interest to British lawyers. He suggests that a comparison between the legal principles underlying this judgment, and those followed by our own courts in deciding similar cases, might form an interesting subject for discussion by law students' societies. Dr. S., a well-known dentist practising at X, took as his assistant in 1925 a certain Dr. Z. The latter signed the following agreement: "The undersigned gives his word that if he should leave the chambers of Dr. S. he will not practice at X for two years." He was dismissed for the first time at the end of 1927, but a reconciliation took place, and he resumed his position with Dr. S. without any mention of the agreement. Later, in April, 1929, Dr. Z. himself broke the agreement and accepted a similar post with a rival dentist in the same town, sending out a circular to all his acquaintances, including those he had made at the chambers of Dr. S., announcing his change of employment. The latter thereupon started an action against him, claiming 5,000 francs as damages for breach of agreement and "disloyal rivalry." The Federal Tribunal rejected the claim, and dismissed the action for the following reasons: (1) the clause in question did not go beyond the general limits laid down in Article 20 of the Contract Code, which says that a contract is void if it has as its object something contrary to custom; (2) the excessive limitation of the liberty of contract being considered by jurisprudence as contrary to custom, this action could only be based on Article 356 of the code, under which, in a contract of employment which involves knowledge by the employee of the employer's secrets, it is illegal for the employee so to make use of that knowledge as to cause the former employer definite injury. In this case there could be no trade secrets, as the plaintiff himself admits. As for knowing the clients, an employee would not be able to profit by that when the relations between them and his employer were of a personal character depending upon the competence of the latter. A famous surgeon cannot forbid his assistant to set up in rivalry against him, nor a well-known lawyer his managing clerk. It is true the employer may suffer by the loss of a competent employee, but the true cause of the damage so suffered is to be found in the competence of the employee rather than in his personal acquaintance with the clients.

Smoke Nuisance from an Artificial Silk Factory.

NOT SO long ago a number of those vocal but not invariably tuneful individuals who live by hawking the latest novelty were to be seen exhibiting for sale, in the palms of their hands and on the kerb-stones of the West End of London, an unæsthetic monstrosity described on rudely improvised placards as "the Celanese silk worm." That was in the heyday of Celanese silk, at a time when public as well as manufacturers really believed that the artificial was a better economic proposition than the genuine article. Doubt may now be thrown on that view in, at any rate, some quarters, by the decision of CLAUSON, J., in *Attorney-General* v. *Rayon Manufacturing Company* (1927) *Limited* (*The Times*, 30th July), in which the Attorney-General, at the relation of the Epsom Rural District Council, claimed an injunction to restrain the defendant company from discharging from their factory fumes, smoke or smells so as to cause a nuisance to the public. The writ in the action had been issued on 14th May, 1928, and by an order made on 19th July of that year, the defendant company, who denied causing a nuisance, was perpetually restrained from discharging fumes, smoke and smell so as to cause a nuisance. The company submitted to judgment, and ultimately the order was suspended till 31st December, 1928, on the company's undertaking to instal plant to put an end to the nuisance. The motion before CLAUSON, J., was for leave to enforce, by sequestration, the order of 19th July, 1928, which had been made by ASTBURY, J. It was admitted that the defendant company had spared no expense in trying to abate the nuisance, but it was contended that its efforts had failed. CLAUSON, J., upheld the contention, and decided that he could not accept the evidence of those who merely said that they had not smelt the fumes against the positive assertions of those who said that they had. The smell of sulphuretted hydrogen, he said, was without doubt, very, very unpleasant, and he held that the Attorney-General, representing the public, was entitled to insist on the order asked for; but he added that if, within ten days, £1,500 was paid into court by the company as security for the plaintiff's costs, the writ of sequestration would lie in the office until 31st October. The company is thus given some time to purge its unwilling contempt. Meanwhile, the question whether the manufacture of an inexpensive article is robbed of its advantages by the cost of letting sulphuretted hydrogen loose upon the public is one which artificial silk manufacturers can best decide for themselves.

Mr. H. A. N. WALTER, M.A., LL.B., assistant solicitor North Riding of Yorkshire County Council, has been appointed Assistant Solicitor to the Derbyshire County Council.

Criminal Law and Practice.

A Loophole in the Street Betting Act, 1906.—The conviction of a man on a charge of loitering for the purpose of betting has been quashed by the Recorder (Mr. S. R. C. Bosanquet, K.C.) at the Walsall Quarter Sessions. It was contended that as the accused man rode up on a bicycle and immediately rode away again, after receiving a package from another man, he was not loitering. On being taken to the police station he threw down a package containing 102 betting slips. In support of the appeal it was argued that the dictionaries defined loitering as "dawdling," "hanging about" and "lingering," and in quashing the conviction the Recorder said he very much doubted whether the section of the Act under which the man was convicted applied to what was presumably a pre-arranged meeting.

This decision, awkward as it is, seems to be sound. There is no judicial definition of "loitering" either under this Act or the Vagrancy Act. The only case known to us in which the word is considered is the Scottish decision of *Fairfoul* v. *Somerville* [1895] 23 R. (J.) 6. There the driver of an omnibus was charged and convicted under a bye-law with "loitering therewith on a certain public street." He drove his bus at a slow walking pace four times along a street, stopping to take up passengers, before starting for his destination. The Court of Justiciary quashed the conviction. But the considerations here involved are so different from those under the Street Betting Act that the case is of little use.

A Free Pardon.—There is much to recommend the proposal made by a Member of Parliament that in cases of wrongful conviction there should be substituted for the phrase "free pardon" some form of words more in consonance with the facts, and less liable to misconstruction. People do not ask pardon for wrongs they have not committed, and indeed a man smarting under a sense of injustice may well feel, until it is laboriously and yet unconvincingly explained to him, that the offer of a free pardon as amends for a miscarriage of justice is a little ironical. The whole idea of pardon, outside this one legal phrase, is the remission of a penalty justly incurred; and the cancellation of the conviction in the same form as would be used if the act of clemency were indeed an act of forgiveness is likely to mislead some people. A free pardon does of course wipe out all consequences of conviction, and it is meant to rehabilitate a man's character. It would, however, be far more definite and satisfactory if the form of words were that the conviction was annulled on the ground that it was found to be wrong.

Crime in London.—The serious increase in crime in London, as shown in the recently issued report for 1930 of the Commissioner of Police for the Metropolis, need not cause alarm if the figures are analysed and suitable preventive measures are taken. Although the number of indictable offences committed in London during 1930 was 20,553, as against 17,664 in 1929, and the number of persons proceeded against was 13,020, as against 11,332 in the previous year, it is interesting to observe that the greater part of the increase is composed of housebreaking cases, which number 5,408, as against 2,344 cases in 1929. The Commissioner lays stress on the fact that any precautions which make it more difficult to open doors and windows are well worth taking, as "the number of cases in which entry can be made without the use of any tool, and in which, once entry has been made, there is absolute freedom to roam about the premises, is far too large." There is, however, a disquieting increase in the number of cases of robbery and larceny from the person, including a number of cases of bag snatching by men using motor cars. The fact that the number of blackmail cases was forty-eight for 1930, being three times the annual average for the previous twelve years, is easily accounted for by the practice of the courts during the past five or six years of allowing the suppression of the victim's identity in such cases. The number of murders rose from ten in 1929 to twenty-one in 1930, and only in one case was the murderer not traced. This effectively disposes of the legend of the inertia of the police in dealing with "unsolved murder mysteries." Another factor in the increase of crime which is stressed by the Commissioner is the fact that criminals can obtain the temporary assistance of a motor car very easily, simply by appropriating one left standing in the street, and point is lent to this by the fact that a very large percentage of the motor vehicles reported stolen are recovered within a comparatively short time. It is pointed out that professional criminals are constitutionally lazy, and where suitable precautions are taken to prevent theft, it is almost unknown for a car to be stolen from the street. No question can arise, whether from the report or otherwise, as to the efficiency of the police. Particularly since the commencement of Lord Byng's administration as Commissioner, public confidence in the police system of this country has been unshakeable, and there is every expectation that it will continue to be so after his retirement, which has recently taken place. The police, however, are not omnipotent, and the intelligent co-operation of the public will do much to reduce crime in our midst.

Directors and Conversion.

By CHARLES CLAYTON, Barrister-at-Law.

The personal and several liability of the directors of a company, in certain circumstances, for the tortious acts of the company was recently considered by Mr. Justice Wright in an interesting case heard by him at Shrewsbury Assizes, and in which he delivered a reserved judgment in London on the 15th July (*Singer & Co. Ltd.* v. *D. E. F. Foulkes & Co., Ltd., and Others*, 75 Sol. J. 603). The plaintiffs, who were motor-car manufacturers, had, under the terms of a written agreement, delivered to the defendants, motor-car dealers, a new six-cylinder 14 cwt. delivery van chassis for the purpose of exhibition in their show-room. The agreement provided that the van should not be taken out on the road for demonstration purposes or otherwise; and that it should remain the plaintiffs' property until purchased and paid for by the defendant company. It was further agreed that, until so purchased and paid for, the defendant company should have no right to deal with or dispose of the van in any manner whatsoever. Subsequently, one of the defendants' salesmen informed the director of the defendant company who was in charge of the sales department, Mr. D. E. Foulkes, that he could sell the chassis subject to a part exchange. Thereupon Mr. Foulkes, who had himself signed the agreement with the plaintiffs, authorised the salesman to carry out the sale, make the contract and deliver the van. By the time this transaction came to the notice of the plaintiffs the defendant company was in serious financial difficulties, and on the appointment of a receiver by the debenture-holders was found to be hopelessly insolvent. In the action brought by the plaintiffs for damages for the wrongful conversion of the van, therefore, the defendant company did not appear, and the matter which was heard by his lordship at Shrewsbury, was a claim against two directors of the company, Mr. Foulkes, the head of the bought and sales department, already referred to, and a Mr. Thorpe, who, it transpired, had no connexion with that department and whom his lordship held free from all liability in respect of the transaction in question.

Mr. Justice Wright, in the result, held that the defendant Foulkes was liable in conversion to the plaintiffs in that he had authorised the salesman to carry out the sale. "It is perfectly true," said his lordship, "that a director as such is not personally liable for the tortious acts of the company. He is only liable if he has acted in such a way as to take upon

himself the personal dealing which has constituted the wrongful act." If he has done so, and it was held that FOULKES had done so in the present case, then damages can be recovered against him in conversion, even though in law the possession of the thing converted is not in the director but in the company. In order to make a director severally responsible, something more than mere knowledge is necessary, something in the nature of active intermeddling, actual authorisation or directing is essential. Provided that there is such active interference, however, a man may be liable for conversion if he deals with another person's property in a manner inconsistent with the rights of that person even though, in so doing, he has no idea that he is violating the true owner's rights of property.

There are a number of authorities for this proposition, and a comprehensive definition of conversion is found in the words of Mr. Justice ATKIN (as he then was) in *Lancashire and Yorkshire Railway Co.* v. *MacNicoll*, 62 SOL. J. 365; [1918] 88 L.J. K.B. 601, and which were adopted by Lord Justice SCRUTTON in *Oakley* v. *Lyster* [1931] 1 K.B., at p. 153. "It appears to me plain," said his lordship, "that dealing with goods in a manner inconsistent with the right of the true owner amounts to a conversion, provided that it is also established that there is also an intention on the part of the defendant in so doing to deny the owner's right or to assert a right which is inconsistent with the owner's right." It was argued in *Oakley* v. *Lyster* (*supra*) that there could be no conversion if the defendant was not in possession of the thing alleged to have been converted, but Lord Justice Scrutton referred to the passage by KELLY, C.B., in *England* v. *Cowley*, 21 W.R. 337; L.R. 8, Ex. 126, the case cited in support of this submission, where he said: "Apart from mere dicta, no case, so far as I am aware, can be found where a man not in possession of the property has been held liable in *trover*, unless he has absolutely denied the plaintiff's right." The position of a director who has acted in the company's affairs in the manner alleged in the *Singer Case* (*supra*), Mr. Justice WRIGHT pointed out, was not dissimilar from that illustrated by the case of *Stephens and Others* v. *Elwall*, 4 Maule and Selwyn 259, where the defendant was a mere servant who acted upon his master's instructions and purely for the benefit of the master carried out the transfer of certain goods. The servant acted in perfect good faith and in perfect innocence, and had no idea that the master was not entitled in law to deal with the goods. In that case Lord ELLENBOROUGH, C.J., said the only question was whether that was a conversion in the servant, which undoubtedly was so in the master. The clerk had acted under an unavoidable ignorance and for his master's benefit when he sent the goods to his master, but nevertheless, his acts might amount to a conversion, "for a person is guilty of a conversion who intermeddles with my property and disposes of it, and it is no answer that he acted under authority from another who had himself no authority to dispose of it." Although the above judgment was delivered in 1815, the principle therein is applicable to-day, and it was approved by the high authority of Mr. Justice BLACKBURN, in *Hollins* v. *Fowler*, L.R. 7, H.L., at p. 770. A further illustration of the principle is to be found in the case of *Consolidated Company* v. *Curtis & Son*, 40 W.R. 426; [1892] 1 Q.B. 495, which was an action in *trover* by the grantees under a bill of sale of household furniture and effects against auctioneers who had sold the same by order of the grantor, in ignorance of the existence of the bill of sale. In his judgment, at p. 496, Mr. Justice COLLINS referred to the great difficulty of framing an exact and exhaustive definition of a conversion, and said that it was not easy to draw the line at the precise point where a dealing with goods by an intermediary becomes a conversion. The real difficulty, however, always must arise rather in endeavouring to draw the true inference from facts in particular cases than in grasping the comparatively simple principle involved.

Patents and Constitutional Law.

THE ordinary patent action which comes before the courts follows a well-marked course and seldom raises any novel or interesting points of law. The owner of a patent discovers that someone is apparently infringing his patent, and he brings an action for an injunction and damages. The defendant may deny the infringement, but he more often relies on the defences of anticipation, want of novelty and want of subject-matter. In either case the issue becomes one of fact, often obscured by the mass of evidence given by technical experts on each side. But *In re Wingate's Patent* [1931] 2 Ch. 272, raised difficult questions of the procedure of the Patent Office, and also, though it did not decide, points of constitutional law. Before an intending patentee can obtain a grant, his claim may be subjected to opposition from rival inventors on various grounds mentioned in s. 11 of the Patents Act, 1907, and the decision rests with the Comptroller-General, acting upon reports from examiners, and subject in most cases to an appeal to the Law Officer of the Crown, who is probably much less familiar with the subject than the Comptroller. But in *Wingate's Case* the opponents were not satisfied with ordinary opposition proceedings in the office, and moved for the issue of a writ of prohibition to restrain the Comptroller from granting the applicant's patent. The applicant, Mr. WINGATE, lodged an application for a patent for folding spectacles in October, 1928, and followed this up with a complete specification in July, 1929, which was accepted and published. Notice of opposition was then given by a rival manufacturer, and in April, 1930, Mr. WINGATE lodged another application for a similar invention, but with fewer and wider claims. It was alleged that the opponents were making folding spectacles which would be an infringement of the later, but probably not of the earlier, specification. The applicant then asked the Comptroller to divide the patent under r. 13 of the Patent Rules, and this application succeeded, the patent being treated as one for an invention excluded by amendment from the earlier specification and made on 26th October, 1928. The whole dispute turned upon this date. The opponents being advised that they could not raise the question of the ante-dating of a patent in ordinary opposition proceedings which, therefore, for their purpose, became futile, moved for a writ of prohibition and contended that the Comptroller had acted in a manner *ultra vires* the Patents Acts and had no jurisdiction to grant the patent in the form and of the date that he proposed to do. The Comptroller and the applicant both appeared, but argued the case on somewhat different lines. Sir ARTHUR COLEFAX for the Comptroller contended that his decision was final, subject to the directions of and an appeal to the Law Officer. Counsel for the applicant, Mr. TREVOR WATSON, went deep into constitutional law and submitted that no proceedings for prohibition could lie in the Chancery Division, as the grant of a patent was a Crown matter, and that the Comptroller was not acting as a court but an executive officer, and finally that even if prohibition lay no proceedings for the writ could lie while opposition was pending. EVE, J., who reserved judgment, dismissed the motion without going into any of the points of constitutional law which had been argued. He held that the decision in *Re Stromberg Co.'s Application*, 40 R.P.C. 405, upon which the opponents relied, must be confined to the matter there under consideration, the ante-dating of a patent under r. 3 (*a*) of the Temporary Rules, 1914, and did not prevent the question of date being raised in opposition proceedings in the Patent Office. The moving parties had therefore not made out their case, but even if they had done so the learned judge held that prohibition would not lie against the Comptroller in respect of a matter arising in the administration of the Patent Acts, for, subject to the right of appeal to the Law Officer, his decision thereon was final. The further points raised in argument must be left to be dealt with on some future occasion.

Republication of Testamentary Instruments.

A REVIEW OF THE PRINCIPLES ON WHICH DEFECTIVE EXECUTION MAY BE CURED BY THE EXECUTION OF A LATER INSTRUMENT.

By G. E. MACDONALD, Solicitor.

ALTHOUGH s. 9 of the Wills Act, 1837, enacts that no will shall be valid unless it shall be in writing and executed as therein mentioned, it is quite clear that the defective execution of a will may in some cases be cured by the execution of a later testamentary instrument. Similarly, unattested alterations and gifts to attesting witnesses (which are rendered null and void by s. 15 of the Act) may be rendered valid. On what grounds and in what cases can a subsequent well-executed instrument cure a defect in the execution of a prior instrument ?

It has always been held that a duly executed will or codicil can by referring to another existing document incorporate the provisions of that document in itself, and thus give testamentary effect to those provisions. On this principle an unattested or unsigned will may be made valid by a codicil containing a sufficient reference to it and either confirming it or showing clearly that the testator treated it as valid. Before the Act of 1837 the fact that the instruments were written on the same paper or were otherwise materially connected was, at any rate, with very slight internal evidence, considered sufficient reference (*Guest* v. *Willasey*, 2 Bing. 429 and 3 Bing. 614) ; but it was held in *Utterton* v. *Robins* (1834), 1 A. & E. 423, that unless the instruments are so materially connected there must be some express reference in the later instrument to the earlier. In each case two points must be considered : first, does the later instrument either confirm or treat as valid some earlier instrument ; and, secondly, is there sufficient evidence to identify such previous instrument ? " Where there is a reference to any written document, described as then existing, in such terms that it is capable of being ascertained, parol evidence is admissible to ascertain it, and the only question then is, whether the evidence is sufficient for the purpose " (*Allen* v. *Maddock*, 11 Moo. P.C.C. 427, at p. 454). Thus in *Allen* v. *Maddock* a reference in a codicil to " my last will and testament " was sufficient to let in parol evidence to prove that a document made in 1831 and attested by only one witness was the one referred to ; but where by a codicil the testator ratified his will and codicils, on its being shown that there were instruments in existence duly executed and properly answering to the description of " codicils," it was held that there was no reference sufficient to let in parol evidence that the testator intended also to confirm a document purporting to be a codicil but not duly attested (*Croker* v. *Marquis of Hertford*, 4 Moo. P.C.C. 339).

Once a reference to an earlier testamentary instrument is found the court will adopt a liberal view of what is the instrument referred to, and if satisfied that the testator intended to refer to a document in existence at the date of the codicil as his will, will not limit the reference to such part of the document as was then valid and so technically the testator's " will " (*Anderson* v. *Anderson* (1872), L.R. 13 Eq. 381). It is on this ground that unattested alterations in a will may be confirmed by a codicil, even though the codicil makes no reference to them.

Since the Wills Act alterations and interlineations in a will are presumed to have been made after its execution, and indeed after the execution of any subsequent instrument (*Cooper* v. *Bockett* (1846), 10 Jur. 935). If, however, the subsequent instrument expressly refers to the alterations and interlineations and confirms them, then such alterations and interlineations will be admitted to probate (*In b. Mills*, 11 Jur. 1070) ; and this is so even if the later instrument only refers to the earlier in general terms, provided evidence is produced showing that the testator knew and approved of the alterations at the time he executed the later instrument (*Tyler* v. *Merchant Taylors Co.* (1890), L.R. 15 P.D. 216). The onus of proving the testator's knowledge and approval lies on the person propounding the will as altered. It is then a question of construction, whether the testator " has confirmed, not the will as validly executed, but the will as altered, with the result that the alteration is by the execution of the codicil now executed in manner required for the execution of a will " (per BUCKLEY, J., in *In re Hay* [1904] 1 Ch., at p. 321).

Anderson v. *Anderson* (cited above) was the first case in which a will containing a gift to an attesting witness (or rather to her husband) was followed by a codicil, duly executed and independently attested, which made a slight alteration and in other respects confirmed the will. The gift to the husband of the attesting witness was in the first instance " utterly null and void " under s. 15 of the Wills Act. Sir JAMES BACON, V.C., had no difficulty in deciding that the will referred to in the codicil was the whole document purporting to be the will, and not merely so much of it as would have been valid and have therefore constituted the will if the testatrix had died before signing the codicil. The codicil had the effect of republishing the entire will and making it a new and original disposition.

A more difficult set of circumstances arose in *Burton* v. *Newbery* (1875), 1 Ch. D. 234. The testator made a will dated the 7th December, 1837 (before the coming into operation of the Wills Act), and devised certain real estate specifically described and all and singular other his real estate upon certain trusts. By a codicil, dated the 12th October, 1838, attested by persons beneficially interested in the trusts of his will, he directed that certain real estate purchased by him since the date of his will should be dealt with in the same manner as his other real estate. A subsequent codicil was made in the following terms : " This is a codicil to my last will, dated 7 December, 1837, and I hereby give and bequeath unto my daughter Elizabeth Burton £600 which I desire my executors to pay to her within twenty-four months after my decease." The codicil was dated the 1st April, 1839, and attested by two independent witnesses. No reference was made in it to the previous codicil. In an administration suit the question arose, whether those persons who had attested the first codicil were entitled to any interest in the real estate devised by it. Sir GEORGE JESSEL, M.R., decided that the gifts in the first codicil so far as they concerned the attesting witnesses were void, apparently on the ground that, although " any testamentary instrument properly attested may incorporate into it by reference as a part of the testamentary instrument any prior writing, whether such prior writing be attested or not, and if the incorporation is made in such a manner that the court can find out from the properly attested instrument what is the prior instrument intended to be referred to, then the prior instrument becomes a part of the testamentary instrument to all intents and purposes " (pp. 237 and 238), in this case there was no such reference, and consequently no such incorporation.

The decision in this case appears to be entirely in accord with the principles set out above ; but the editors of " Jarman on Wills " (7th ed., p. 186), contend that it is erroneous and seek to draw a distinction between the incorporation of unattested testamentary papers and the republication of a validly executed document in a later instrument.

The doctrine of republication was originally of importance owing to the rule that a devise of freehold land operated only in respect of land belonging to the testator at the date of his will. If, however, after acquiring new land he executed a codicil, the effect of this was to make the devise operate as from the date of the codicil. And it was said that the codicil " republished " the will. It is submitted, however,

that it is fallacious to assume that this effect was produced merely by the execution of the codicil. The whole point of letting in the subsequently-acquired land was that by executing a codicil the testator recognised that his will was operative, and if the expressions in it were wide enough he must have intended it to be effective over the land then belonging to him. In course of time it began to be felt that the technical rule relating to the devise of real estate was contrary to the spirit of the times, and the courts became more prone to over-ride it, treating on the slightest evidence the execution of a codicil as a re-execution of the whole will. From this arose the doctrine that the mere execution of a later testamentary instrument operated without more as a re-execution of any earlier valid instrument. It is submitted that this view of "republication" has never been accepted by the courts. A statement by Mr. JARMAN in the first edition of his treatise (at p. 174 of Vol. I) that "Constructive republication takes place where a testator, for some other purpose, makes a codicil to his will; in which case the effect of the codicil, if not neutralised by internal evidence of a contrary intention is to republish the will," seems to support the view; but it must be borne in mind that the very term "codicil" used by Mr. JARMAN imports the existence of a valid will and is a reference to a document capable of being identified by extrinsic evidence. In continuation, Mr. JARMAN, still using the word "codicil," points out that no declaration of intention to republish and no confirmation of the will was necessary. He then uses the phrase "the result being precisely the same as if the general or residuary devise had been incorporated into the codicil itself." And later he points out that republication could never operate in spite of a contrary intention in the codicil.

These remarks of Mr. JARMAN were quoted with approval by Sir H. J. FUST in *Skinner* v. *Ogle* (1845), 9 Jur. 432. That case, however, was clearly a case of express reference, for the codicil began with the words "Whereas I have, by my Will."

It is submitted that the term "republication" is erroneous and misleading. Publication of a will is not necessary under the Wills Act; and previously was neither necessary nor effective for any purpose. Indeed, in *Moodie* v. *Reid* (1817), 7 Taunton, at p. 361, GIBBS, C.J., says: "I do not know what the publication of a will is." How can republication be more effective?

The true view appears to be that when one properly executed testamentary instrument contains a sufficient reference to an earlier instrument and such reference is sufficient to show that the testator treated the earlier instrument as operative, then the earlier instrument will be incorporated into the later by means of such reference. The testator acknowledges the validity of some earlier disposition, and it is the execution of his acknowledgment which is effective. A mere reference without more, as by the use of the term "codicil," may be sufficient to show the testator's intention that the earlier document should take effect. Once a reference to a particular document is found, it is immaterial whether or not that document was originally valid; but the validity of a particular document may be of importance in identifying it with the document referred to in the later instrument.

It is submitted that this view is in accordance with the decisions and is supported by STIRLING, J., in *In re Smith* [1890] 45 Ch. D. 632, where he points out that in all the cases of republication there has been some sort of reference in the earlier to the later instrument. In that case the testatrix by her will in 1878, made during coverture, had exercised a power of appointment contained in her marriage settlement of 1864 and also disposed of all other, if any, her moneys, property and effects over which she had any power of disposition. After her husband's death, she executed an instrument as follows: "Dunmow, July 30, 1885. This is a present to Oswald Newman Roper from his aunt, Maria Smith, by the express wish of his late uncle, Joseph Smith a few weeks before his death, 10 shares of £10 each in the Dunmow Gas Company." This was duly signed and attested. It was contended that this was a sufficient republication of her will to validate the disposition of her unsettled property. STIRLING, J., held that there was no republication, and summed up the principle in these words: "In order that republication may be implied, something must be found in the second testamentary instrument from which the inference can be drawn that, when making and executing it, the testator considered the will as his will."

The case of *Gordon* v. *Lord Reay* (1832), 5 Sim. 274, does not, however, accord with this view. In that case the will had been duly executed and attested, and the testator signed a codicil which was unattested. A second codicil was then made which referred to the "last will and testament bearing date the 17th August 1812," but which contained no reference whatever to the former codicil. It was held that the second codicil republished the will, and with it the first codicil, which was part of the will; and, consequently, that the first codicil was valid. It is generally assumed that this decision is wrong (see Jarman, 7th ed., p. 118); it was followed, however, though with some hesitation, by KNIGHT BRUCE, V.C., in *Aaron* v. *Aaron* (1849), 14 Jur. 125. The actual decision in that case is quite in accordance with the principles stated above: for the testator definitely declared that the third instrument was the "second codicil" to his will, and the Vice-Chancellor said: "The intention of the second codicil, as collected from the whole of it, must be to confirm the first, and that is done by an instrument duly attested."

The general tenor of the decided cases appears to support the following statement of principles.

(1) Defective execution of a testamentary disposition may be cured either by re-execution or by the execution of a subsequent document confirming, incorporating or referring to the earlier disposition as valid.

(2) Once such a reference is found, it is a question of construction what documents are within the terms of reference.

(3) The use of the term "codicil" imports the existence of a will, but not of any intermediate documents (though if any such exist and are in themselves valid they will not be revoked without some explicit expression of intention: *Green* v. *Tribe* (1878), 9 Ch. D. 231).

(4) The term "will" comprises all valid testamentary dispositions; unless the reference is clearly limited to a particular document as in *Burton* v. *Newbery*.

(5) If valid documents are found sufficient to exhaust the terms of reference, no evidence is admissible to show that the testator intended also to refer to other invalid documents.

(6) A document duly executed is valid, even though all the dispositions contained in it are null and void under s. 15 of the Wills Act.

(7) If a reference to a particular document is proved, it is presumed that the reference is to the whole document and not merely to the valid parts of it.

(8) It is further to be remarked that if a reference is made to a particular document, and that document is found to contain alterations or interlineations, evidence is admissible to show that such alterations and interlineations were in existence and were approved by the testator when he executed the later document, and thus to bring them within the scope of the reference in the later document.

RACEHORSE TRAINER'S ACTION.

The Lord Chief Justice on Tuesday, fixed 23rd November for the trial of the libel action *Chapman* v. *Ellesmere and Others*. The plaintiff is Mr. Charles Chapman, and the defendants are the Stewards of the Jockey Club, Messrs. Weatherby and Sons and The Times Publishing Company, Limited.

Concerning Boundary Hedges.

Boundary hedges have been a theme of controversy between adjoining owners and occupiers of land from time immemorial. The law on the subject is well settled, so that disputes now almost invariably resolve themselves into questions of fact. The general rule of law that the ditch belongs to the owner of the hedge is based on the very reasonable presumption that the man who planted the hedge went to the boundary line of his own property and dug out soil to make a bank on which to plant his hedge—throwing up the soil on his own land and not, of course, on his neighbour's land. Hence the boundary of his land would be the edge of the ditch on his neighbour's side, and not the root-line of his hedge-bushes.

But where a hedge appears to have been planted on level ground—or where there is a ditch on both sides of the hedge—the problem of determining the ownership of the hedge is well nigh insoluble in many cases, especially if (as sometimes happens) neither party has claimed the right or assumed the responsibility of trimming the hedge. In such a case recourse must be had to documents of title to see if possible whether they will reveal any solution of the problem of ownership; failing that perhaps some other record may be found to disclose who planted the hedge originally, or who has in the past exercised right of ownership by cutting it. There have been cases in which both neighbours have disclaimed the right of ownership; here, unless one can "father" that right upon the other, it would appear that the hedge is nobody's exclusive property, but is merely a boundary fence between the two closes or farms held in common after the fashion of a party wall. In such an event the parties should mutually agree to share the cost of keeping the hedge in order for their joint convenience. Failing such an agreement the rule of law will prevail that no man is obliged to fence against his neighbour's cattle, but that every owner of cattle must keep his cattle on his own land and will be liable for any damage they do by trespassing.

Similarly, although there is no law which imposes upon the owner of lands adjoining a public highway the obligation to repair and maintain the fences, yet if he lets them get into disrepair and become dangerous to passers by, he will be liable to pay damages to any person injured thereby. The former point was settled in *Potter* v. *Perry* (1859), 23 J.P. 644, and confirmed in *Jones* v. *Lee* (1912), 76 J.P. 137; the latter (disrepair) in *Harrold* v. *Watney* [1898] 2 Q.B. 320. These three cases should be referred to, as they make the position quite clear. In *Jones* v. *Lee* a horse belonging to the defendant which had escaped from a field on to the highway owing to a defective fence, ran into a tandem bicycle and injured the two persons riding it. In an action for damages for negligence it was held that there being at common law no duty on the owner or occupier of land adjoining a highway as regards passers-by on the highway to keep his quiet domestic animals not known by him to be vicious off the highway or to fence his land so as to prevent them from escaping, the plaintiffs could not recover except upon proof that the horse was known to its owner to be of a dangerous disposition and that therefore it should have been so kept that it could not be at large. Bankes, J., in the course of his judgment, said: "This case is no doubt one of very considerable importance to owners and occupiers of land adjoining a highway. I think that the law with regard to such persons and their liability for straying animals upon the highway is very well settled . . . The law undoubtedly is different with regard to a straying animal which is known by its owner to be a dangerous animal, and the law applicable to an animal which is a quiet inoffensive domestic animal, or, at any rate, an animal not known by its owner to be dangerous. Now, I do not propose to say anything with regard to the liability of an owner of a dangerous animal which is found straying on the highway and causes damage to a passer-by, because that question does not arise in this case. The question in this case has reference only to an ordinary domestic animal which the county court judge has found to have been a quiet animal, or, at any rate, an animal not known to be dangerous . . . What is the duty of an owner or occupier of land adjoining a highway with regard to keeping animals off the highway or fencing his land so as to prevent animals getting on to the highway? By common law there is no such duty at all, and we have not to-day heard any argument as to whether any duty can be created under the Highway Acts. I am not going to consider that for the purpose of my judgment. Suffice it to say, that by the common law the owner or occupier of land adjoining a highway is under no duty to fence so as to keep his animals off the highways. The plaintiffs, therefore, in this case seem to me to fail in establishing the first proposition which it is necessary for them to establish, namely, that there is any duty as between the owner of this animal and themselves."

The case of *Harrold* v. *Watney* was one in which the defendant was the owner of a fence abutting on a highway. The plaintiff, a child four years of age, attracted by some boys at play on the other side of the fence, put his foot on it, and it fell on and injured him. In an action for damages for the injuries so sustained, the jury found that the fence was very defective, but actually fell through the plaintiff standing wholly or partly on it, though not for the purpose of climbing over. The Court of Appeal held (reversing the decision of Ridley, J., who gave judgment for the defendant) that the defective fence being a nuisance and the cause of the injuries to the plaintiff, the defendant was liable. This case differs from *Jones* v. *Lee* in that the owner had thought fit to put a fence to divide his land from the highway: when a fence is so erected, whether it be a hedge or a wall or palisading, its owner must not allow it to become a nuisance or dangerous to passers-by; subject to that, however, there is no duty on the part of the owner of lands who has so erected a fence to keep that fence in repair, whether it be to prevent his cattle from straying or for the convenience of the public or otherwise.

Matrimonial Differences.

If marriages are made (always) in Heaven and unmade (frequently) in the Strand, it is true also that they are cemented (sometimes) in the police court.

One police court district more than another has enjoyed for many years a reputation for discontented wives. To that district one turned for illumination, and from that court, by the courtesy of the officials, some statistics were obtained. The figures are the figures of that court, but the dogmas hereinafter laid down are of general application.

A superficial look at the returns of matrimonial cases in the London Police Districts might not appear to support the thesis with which this paper opens, but examination shows some light amidst the gloom.

The number of the cases is great.

At this one court in the first quarter of the current year what are called periodical payments amounted to £3,958 2s. 3d. It would not be right to suppose that wives got all of this, because payments under bastardy orders are included in the total and cannot be distinguished. It may, however, be taken for granted that a very small proportion of the whole represents bastardy matters and that the greater part of that great sum was paid during three months in one district of London by husbands to their wives under orders of court.

As a matter of interest, the figure for the year terminating on 31st March, 1931, was £16,174.

In considering what these figures mean it must be remembered that each of the orders under which payments are made is for a relatively small weekly amount.

In a busy London court probably the magistrate has at least a couple of dozen applications every week for summonses for separation orders. They come in greater numbers on Mondays and Tuesdays, when the tide of the week-end has reached and passed the flood.

For that reason applications made later in the week are more likely to contain something of substance. Monday applicants often do not really mean it, and often, very properly, the application is refused and the matter goes no further.

The proportion of summonses which are heard and terminate in favour of the applicant seem to be less than one-third of the total issued.

It would be safe probably to say that no magistrate makes separation orders within a few months or years of the marriage until he has by his own efforts and the missionary's, by persuasion, by adjournment, and by other devices, tried whether the home cannot be established before it is to be overthrown.

During the quarter of the year for which the figures have been got out, it is interesting that of seven cases which were adjourned *sine die* to give the parties another trial, no case has up to date (and that is a matter of five months later) been reinstated in the list for further hearing.

During the three months over ninety summonses were granted, of which eleven were not served. Twenty-five cases were heard and dismissed, and in twenty-two cases the complainant did not appear to pursue the application.

Orders, of the type generally known as maintenance orders, were made in twenty-four cases, and in three only was a separation order made.

The inference to be drawn is probably that in three cases only was a wife found entitled to be relieved of the necessity of living with her husband on account of his cruelty to her.

The ground on which these orders can be sought are of course, cruelty (which must be persistent), drunkenness (which must be habitual), desertion and wilful neglect to maintain.

Habitual drunkenness is, in practice, a dead letter, and cruelty claims fail probably more often than the others.

In a very great number of neglect cases the husband is either doing the best he can or has stopped part of the money in order to point a moral or effect a domestic reform. These cases are not difficult to adjust.

Desertion is a ground that presents scope for adjustment. Husbands leave their wives, it seems, most often because the wives won't leave their mothers; they also leave because the wives drive them to it by nagging. In neither case on those facts do the wives seem entitled to maintenance by their husbands.

When the wife is in the right and the husband in the wrong, the cause is generally another woman. Such cases are less capable of being set right.

The virtue of the people in these cases is that so many of them are susceptible to suggestion. If the court publicly, or the missionary in an upstairs room, can show them a way to try again, give them a hint how to practise mutual forbearance, it is wonderful how they will follow it up.

And again, in many cases, the woman's readiness to go more than half-way in response to an uncouth profession of regret, fills one with wonder and admiration.

The love, patience and charity of the Cockney woman are sometimes as wonderful as her tongue is at other times deadly.

And the man is often a good fellow roughly disguised.

Quite a lot of the trouble is a matter of misunderstanding.

When a boy and girl come to ask the court to allow a marriage to which the parents will not consent and when their prospects in life are his expectation to qualify soon for the dole, one sees the possibilities of trouble accruing later on.

Determination of a Trust by the Usage.

By A. B. BOURCHIER CHILCOTT, Solicitor.

In the administration of trusts it is a fundamental principle that no length of time will warrant a deviation from the terms of the instrument creating the trust which the court regards as plain (*Attorney-General* v. *Corporation of Rochester*, 5 De G. M. & G. 797), although in the case of a charitable trust this is departed from where the directions, though originally precise and complete, have become, under altered circumstances, unsuitable to carry out the general intention of the founder: *In re Mason's Orphanage* [1896] 2 Ch. 596.

Where the origin of a charity or a right is lost in obscurity, the court will presume from the uniformity of the practice or use that it is in accordance with the original foundation or right, and will presume whatever may be necessary to give it validity, but no such presumption can arise from practice for a very long period if an origin contrary to such practice is proved: *Attorney-General* v. *St. Cross Hospital*, 17 Beav. 435. In such a case it may be said the usage is considered as presumptive evidence of the original trusts: *Attorney-General* 28 Beav. 485.

Now usage differs from custom and prescription in that no man may claim a rent, common, or other inheritance by usage, though he may by prescription or custom.

It has been stated that a usage is local in all cases and must be proved; whereas a custom is frequently general and as such is noticed without proof. However this may be, usage and custom are now used interchangeably, though custom seems to have been originally confined to local usages immemoriably existing: Browne's "Usages and Customs," p. 13, whereas a usage is not required to be immemorial to establish it: *Lowry* v. *Read*, 3 Brewst. 452.

In considering the application of the law as to usage, a distinction must be drawn where the trust is for a charitable purpose of a religious nature and where the purpose is non-charitable.

Where the trust is for a non-charitable purpose the law as to usage is inapplicable, as no length of time will validate the application of trust funds by trustees to a purpose, though similar, not authorised by the instrument creating the trust. On the other hand, the law as to usage may be called in aid where the object is for religious worship in connexion with a particular religious denomination or for the teaching of a particular doctrine where no evidence, other than that of usage, exists.

It has always been the aim of our courts of law to carry into effect the intentions of testators where such intentions can be carried into effect without infringing any rule of law. In conformity with this aim the courts of equity have considered themselves bound to adopt that construction which satisfies the testator's general intention in cases where the particular intention cannot be carried out: "Fearne on Contingent Remainders," Vol. I, p. 204.

The exercise of this jurisdiction is known as the doctrine of approximation, or in other words, the doctrine of *cy près*, and is more often than not applied to gifts for charitable purposes, although it is sometimes resorted to in cases of limitation of real estate where void as contravening the law of perpetuities, but only where the estates in remainder are estates in tail, the courts taking the liberty of altering such limitations to what it is presumed the testator would have done had he been acquainted with the law. The law as to perpetuities having no application to trusts for charitable purposes, the doctrine of *cy près* is applied—not in order to avoid an infringement of any rule of law—but in order to carry into effect the charitable intentions of a testator where, and only where, a general charitable intention to devote the property to charity can be discovered.

Even where a general charitable intention can be discovered, and the slightest indication of such an intention is sufficient, in conjunction with a trust for a particular charitable purpose, the doctrine does not enable the court to execute the trust for the particular purpose in a manner different from that intended, except so far as it sees that the particular purpose cannot be executed literally, in which case the court considers it is at liberty to adopt another mode consistent with the general intention so as to execute it in substance: *Attorney-General* v. *Boultbee*, 2 Ves. J. 380.

The presumptive evidence as to usage is resorted to in cases of trusts for religious worship where no other evidence can be discovered from the deed creating the trust what was the nature of the religious worship intended by the founder, this nature being implied by the usage of the congregation (*Attorney-General* v. *Barson*, 3 Mer. 353). Where it can be ascertained that the institution was established for the express purpose of such form of religious worship, or the teaching of such particular doctrines as the founder has thought most conformable to the principles of the Christian religion, it is not in the power of individuals having the management of that institution at any time to alter the purpose for which it was founded. In such a case the nature of the original institution must alone be looked to as the guide for the decision of the court (*Free Church of Scotland* v. *Overtoun* (*Lord*) [1904] A.C. 515, at p. 644.)

The length of time during which consistent usage in the administration of a trust for religious purposes must have prevailed to enable the court to give effect to it is, in some cases, determined by statute.

Thus, in the case of Protestant dissenters the Act of 7 & 8 Vict. c. 45, s. 2 (The Nonconformists Chapels Act of 1844), provides (*inter alia*) that where no particular religious doctrine or mode of regulating public worship is expressly stated in the instrument declaring the trusts of any meeting-house for the worship of God by persons dissenting from the Church of England or by reference to some book or document containing such doctrine or mode of regulating worship, the usage of twenty-five years of the congregation frequenting the same is taken as conclusive evidence that such religious doctrine or mode of regulating public worship may properly be taught or observed.

The statute, therefore, has no application where there is an express direction in the trust deed, or some reference therein to a document containing the doctrine or mode of regulating public worship, in which event the question of usage does not arise (*Attorney-General* v. *Anderson*, 57 L.J. Ex. 543), but by the force of the statute, usage of twenty-five years now over-rides the intention of the founder expressed in writing where no reference to such writing is to be found in the instrument of trust.

It is, however, competent to a congregation of dissenters *acting unanimously*, and with the concurrence of the trustees, to introduce effectually into their system and constitution, new regulations from time to time, not in contravention, or opposed in principle to it (*Attorney-General* v. *Murdock*, 1 De G. M. & G. 86).

Where the trust deed of a religious denomination contains a power in some recognised body to control, alter or modify the tenets and principles at one time professed by the denomination, this power to vary may be exercised if the instrument of trust provides for the case of a schism, and the court will act upon it (*Milligan* v. *Mitchell*, 3 My. & Cr. 72), but if there be no such provision, and the congregation happens to divide, the court will not execute the trust at the expense of a forfeiture of their property by the *cestuis que trust* for adhering to the opinions and principles subject to which the congregation had originally united (*Craigdallie* v. *Ackman*, 1 Dow. 1): see also the more recent case of *General Assembly of the Free Church of Scotland* v. *Overtoun* (*Lord*), *supra*, p. 515).

A somewhat similar provision as to evidence of usage is contained in the Roman Catholic Charities Act, 1860, 23 & 24 Vict. c. 134.

By s. 5 of this enactment, "Where any real or personal estate subject to any use, trust, gift, foundation or disposition for any charity relating to or connected with the Roman Catholic religion shall have been applied upon any charitable trusts relating to or connected with the same religion during any continuous period of twenty years, but the original trusts of such property shall not be ascertained by means of any written document, the consistent usage of the last preceding twenty years, or of the last period of twenty years during which any consistent usage in the application of such property shall have prevailed, shall be deemed to afford conclusive evidence of the trusts on which the same property shall have been settled."

Previously to the decision of the House of Lords in the case of *Bourne* v. *Keane* [1919] A.C. 815, there were certain tenets of the Roman Catholic religion which were deemed superstitious.

These tenets were apparently recognised and affirmed by the Roman Catholic Charities Act of 1860 above referred to, s. 1 of the Act enacting that "no existing or future gift or disposition of real or personal estate upon any lawful charitable trust for the exclusive benefit of persons professing the Roman Catholic religion should be invalidated by reason only that the same estate has been or shall be also subjected to any trust or provision deemed superstitious or otherwise prohibited by the laws affecting persons professing the same religion."

The Act empowered the court to apportion the same estate or the annual income thereof, so that a proportion thereof may be exclusively subject to the lawful charitable trusts declared by the donor or settlor and that the residue may become subject to such lawful charitable trusts for the benefit of persons professing the Roman Catholic religion. In the case of *Bourne* v. *Keane*, *supra*, the House of Lords held that a bequest of personal estate for masses for the dead was not void as being a gift to superstitious uses, and that such a gift ceased to be impressed with the stamp of superstitious use when Roman Catholicism was again permitted to be openly professed in this country and that henceforth it could not be deemed illegal (see p. 860). One result would seem to flow from this decision, and that is that the question of the application of the law as to superstitious uses will seldom, if ever, have to be considered. Hitherto it has been chiefly applied to bequests for masses for the dead, and it will be somewhat difficult to discover uses to which the law will now be applicable. It should, however, be remembered that there are other uses which, although of a religious nature, have no ingredient of charity; for instance, lighted tapers and ornaments for adorning or dressing the figure of the VIRGIN MARY, and it is possible that a gift for either or both of these objects would be upheld as being for a purpose connected with the Roman Catholic religion, but a gift to apply the income of a fund to such purposes would, on the ground that the objects are not charitable according to English law, be held void on the ground of perpetuity, in which event the provisions contained in s. 1 of the Roman Catholic Charities Act, 1860, might be resorted to and the gift applied to lawful purposes, where the gift is also subject to a trust or provision for a lawful charitable purpose. If there be now no such uses, the provisions as to unlawful trusts, in s. 1 of the Roman Catholic Charities Act of 1860, have become inoperative. It will be noticed that the decision of *Bourne* v. *Keane* does not lay down that a bequest of personal estate for masses for the dead is a good charitable gift, but there is a decision of the former Irish Court of Appeal that such a bequest for masses in *perpetuity* is a good charitable gift (*O'Hanlon* v. *Logue* [1906] 1 I.R. 247). In delivering judgment in this case, PALLAS, C.B., said: "The existence of a divine service is essential to all religions; and equally essential is the existence of a privileged class, a priesthood, or a class of ministers by whom that divine service shall be celebrated on behalf of the Church. The divine service of a particular religion must be defined by the doctrines

of its own religion. Without those doctrines it cannot exist as a divine service. Without a knowledge of those doctrines the spiritual effect of the service cannot be understood; consequently the effect of the divine service cannot be known otherwise than from the doctrines of its religion, coupled with a hypothetical admission of its truth. But the advancement of any theistic religion is charitable, and such advancement may result from an increased number of celebrations of its divine service. Therefore the charitable nature of a divine service must (when the religion is not an established one) depend upon the character of the act, not objectively, but according to the doctrines of the religion in question."

The case of *O'Hanlon* v. *Logue, supra*, has been commented upon in a Canadian Court of First Instance, where it was held that a trust to apply the income of a fund for masses was not for a charitable purpose and therefore void as tending to create a perpetuity: *Re Zeagman*, 37 Ontario L.R. 536.

The Nonconformists Chapels Act of 1844 and the Roman Catholic Charities Act, 1860, are the only statutes which enact that evidence of usage may be called in aid to show that certain religious doctrines or mode of regulating public worship were the doctrines or mode of public worship subject to which the property in question was settled.

The Repair of Stiles and Footways.

THE country solicitor is often called upon to advise owners and occupiers of land as to their liability to do repairs to stiles, gates and footways generally, which local authorities will often, as a matter of common form in many cases, request them to carry out. Compliance with any such request is likely to involve admission of liability; and therefore, although the immediate issue may be one of small monetary importance, it is nevertheless advisable to ascertain the legal position with precision, and having ascertained it, to stand firmly upon it. The average highway surveyor, upon complaint that a stile is broken down or a footway muddy, over which the public pass, has a very pleasant habit of "dropping a line" to the landowner, asking him to have it attended to. It may be that the landowner or his predecessor in title has been good natured enough to comply from time to time with these little requests. In such case interesting questions may arise as to liability *ratione tenuræ* or as to prescriptive liability.

An interesting review of this subject will be found in *Rundle* v. *Hearle* [1898] 2 Q.B. 83. The facts in that case were that the plaintiff was traversing a public footpath running across two fields occupied by the defendant—a stile being in the fence separating the fields. This stile was out of repair, and plaintiff, in getting over it, fell and injured himself. Thereupon he sued the defendant for damages, alleging liability to repair the stile and negligence in failing to do so. The defence was a denial of liability and it was contended that the parish was liable for repairs to the stile. There was evidence to show that occasionally the defendant and previous occupiers of the land had done slight repairs both to the stile and the footpath; but there was no evidence showing that the parish authorities had ever called upon the occupier to do so, nor, on the other hand, that the parish authorities had themselves ever done any repairs. The county court judge found for the plaintiff, holding that defendant was liable *ratione tenuræ*; the Divisional Court reversed this and entered judgment for the defendant, holding that there was no evidence of liability *ratione tenuræ*, but that the fact of repairs having been done by the defendant and previous occupiers was not evidence of liability as it was equally consistent with their having done so for their own benefit.

Lord RUSSELL OF KILLOWEN, in giving judgment, reviewed the authorities and referred to *Mercer* v. *Woodgate* (1869), L.R. 5 Q.B. 26, where a question arose as to the liability of the occupier to repair a footpath over fields in order to make it passable. The pathway in question had been dedicated to the public, subject to the right of ploughing, although the plough would, for the time, destroy all traces of it. His Lordship pointed out that common experience in cases like this went to show that after the plough had passed the path was trodden out afresh by passers-by—not repaired out of hard material, so that the owner in allowing the public to make a pathway thus may do so without assuming any obligation to repair. It was a path over which people might pass if they chose to do so, but they must pass along it as they found it. The inference to be drawn from these facts was that the owner had originally dedicated the right of way to the public subject to this right of periodically ploughing it up.

The learned Lord Chief Justice went on to refer to the case of *Hudson* v. *Tabor* (1887), 2 Q.B.D. 290. Here the plaintiff and defendant were occupiers of adjoining lands, both fronting a creek communicating with the sea. It was necessary for the protection of his land that each person having land fronting the creek should maintain a sea wall to keep out the high tides, and such sea walls had been maintained along the creek time out of mind. Plaintiff's wall was continuous with defendant's, and the level of defendant's land was higher than that of plaintiff's. It became necessary from time to time to put fresh materials on the top of the walls to keep them up to the proper height; defendant had neglected so to top his wall, and, owing to an extraordinary high tide, the water flowed over his wall, and so from the defendant's land on to plaintiff's land, doing considerable damage. The court held that the mere fact that each frontager had always maintained the wall in front of his land, and that no one had thought it necessary to erect a wall to protect his land from the water which might come from his neighbour's land, was no sufficient evidence to establish a prescriptive liability on the part of defendant to maintain his wall for the protection of adjoining landowners. Lord COLERIDGE in delivering judgment said, at p. 292:—

> "The mere repair of a man's own fence for his own benefit, however often done, and during however long a period of time, will not, *per se*, although a man's neighbour may in fact benefit by such repair, impose on a man the duty of continuing such repair for his neighbour's benefit, when he ceases to care to do it for his own."

So we arrive at a very definite presumption of law, namely, that an owner of land who has occasionally repaired a stile or a footway on his land, has done so for his own convenience. This presumption can only be displaced by evidence that the liability to do such repairs either exists *ratione tenuræ*, that it runs with the land as having existed from time beyond memory, or that there is a presumptive liability—a liability with some legal origin, which means in effect that some consideration must be shown for the adoption of the liability, as for instance, that the Crown has granted land by charter subject to liability to repair and maintain a road or a flood-bank, or that one landowner has made some concession to his neighbour in consideration of which the latter has undertaken this particular liability.

So far as *public* footways are concerned (as contrasted with rights of way limited to certain individuals), the liability to repair rests, by common law, upon the inhabitants at large. "The parish is at common law bound to repair all public highways; this being by the common law the mode by which each parish contributes its share towards the public burthen of repairing all highways, instead of all the public roads being repaired by one general tax. The parish must bear in that shape its share of the general burthen, and its inhabitants receive an equivalent, not in the use of the road in particular, but the use of all the public roads in the realm" (per Baron PARKE, in *Rex* v. *Leake* (1833), 5 B. & Ad. 469, cited in "Pratt and Mackenzie," at p. 60). Whatever changes recent legislation may have brought about, that is the basic principle upon which the law as to highway repairs has been formed.

Disposal of Ineffective Subscriptions.

By J. L. DENISON, Barrister-at-Law.

THE position of subscribers to a fund which was being constituted to promote an object which ultimately, in view of insufficient support, became impracticable, was considered recently by the court in *Re Imperial League of Opera Trust; Islington* v. *Beecham* (see *The Times*, 30th July, 1931). The circumstances under which the matter came before the court were as follows: In view of the fact that insufficient subscriptions had been received for the purpose of carrying out the object of the league as regards subsidising grand opera in this country on the scale originally contemplated, the trustees sought directions from the court whether they should take steps to repay subscribers, and as to the disposal of the moneys of those subscribers who did not desire repayment.

Mr. Justice LUXMOORE intimated that the court could not accede to an application that circulars should be sent out to ascertain whether subscribers wanted to have their money returned to them or wished it to be applied for purposes involving the promotion of grand opera, other than those for which it had been actually collected. His lordship said that the proper way was to wind up the trust, and that if it was proved that a large majority wished that the fund should be handed over to another trust, that was a matter for them and that he would not direct the sending out of a circular of that nature.

Ultimately the jurisdiction of the court was obtained by an order being made, on the application of the trustees, for the execution of the trust and for inquiries to be made as to what property was held by the trustees, and to ascertain who were the persons entitled to give a receipt and in what shares and proportions.

The effect of these proceedings makes it clear that the court will not be concerned to promote fresh schemes in an undertaking in which the original scheme has failed, except in the course of administering that undertaking. The position of subscribers to organisations of this kind is well protected, and the correct procedure for safeguarding their interests is well defined by authority.

Conditions somewhat similar to those in the recent case existed in *Pearce* v. *Piper* (1808), 17 Ves. 1. In that case it was desired that the society in question—"The Amicable Society of Master Bakers"—should be continued and not dissolved. A decree was pronounced involving the continuance of the society and the levying, if necessary, of additional subscriptions. From that decree a petition of appeal was presented in which it was submitted "that a court of equity ought not to lend its aid and give effect and duration to an undertaking, founded in mistake." The Lord Chancellor, in the course of his judgment, referring to the question of providing further subscriptions, said: "This society will be sensible that it is much more easy for them, than for the court, to arrange this. If they cannot agree on some plan, I must refer it to the Master to make similar inquiries to those directed by Lord THURLOW; taking the assistance of a calculator; and to inform me, if this society can no longer exist, what will be an equitable distribution of the fund subscribed."

In the modern case of *In re Lead Company's Workmen's Fund Society* [1904] 2 Ch. 196, the functions of the court in connexion with undertakings of this nature receive consideration and are defined in the judgment of Mr. Justice WARRINGTON. In the course of his judgment he says that if justice cannot be done by allowing the rules of the society in that case to go on, "the only way in which justice can be administered on equitable principles will be to endeavour to do the best one can to give to each member of the society that interest in the funds to which he is justly entitled, and that can only be done by winding up the society." His lordship proceeded to consider and apply *Pearce* v. *Piper*, *supra*, and *Re Printers and Transferrers Amalgamated Trades Protection Society* [1899] 2 Ch. 184, and made an order to the effect that the scheme of distribution of the society's funds was to be settled upon the principle of a return to the members of the society, as existing on a certain date, of their contributions, including fines on admission, but irrespective of fines or payments in respect of sick pay or weekly allowances or other benefits, and without interest.

The conclusion, therefore, to which one is driven is that, when the original objects of a society of this kind become incapable of being carried out, the proper course is to have the society wound up, and that trustees cannot safely independently canvass the subscribers to ascertain whether they wish their subscriptions to be returned or to be used in furtherance of some new scheme; the only alternative method of procedure, if no winding up proceedings have been instituted, being for those who wish to promote a new scheme to take, at their own expense, the opinion of each of the subscribers, so far as possible, and to bring the result to the notice of the trustees of the society.

Legal Problems arising on Currency Variation.

By A. J. FELLOWS, M.A., Barrister-at-Law.

AN importer's contract, made a few weeks ago, to buy goods from France or America, and presently to be delivered and paid for in francs or dollars, would probably inflict considerable hardship on him, unless he had bought the foreign currency at the time. Conversely, if he had agreed to pay in sterling, he would have a valuable agreement, and his vendors an onerous one. Similar considerations would apply to a deal in exports. The British pound, loosed from the golden anchor, has lost about a fifth of its value when measured in currencies still moored to it. This of course is neither an event without precedent, nor itself a calamity, though it is certainly a misfortune. Our currency was detached from the gold standard when the war broke out, and remained so detached until 1926. In the intervening years, sterling fell lower than it is now. The difference, perhaps ominous, is that the distrust of our currency exists while we are pursuing our normal life, and there is no reason for it, other than the notion that we as a nation are living on a more extravagant scale than we can afford. No greater object-lesson of the dangers and miseries of currency inflation could be found than the case of Germany a few years ago, and from such a fate we may look with confidence to our government and our own inherent sense and solvency to protect us. Nevertheless, it is the duty of the profession to take the long view, especially in advising on contracts not immediately to be performed, and from that long view a possible further fall in the value of sterling cannot be eliminated.

The matter most directly touches bankers, and those merchants who import and export goods, and both they and their advisers will have their own forms of contract to meet the situation. They have the guidance of a number of cases turning on the fall of the mark, for example, the two arising on the failure of the British-American Continental Bank, *Goldzieher and Penso's Claim* [1922] 2 Ch. 575, and *Lisser and Rosenkranz's Claim* [1923] 1 Ch. 276. *Re Chesterman's Trusts* [1923] 2 Ch. 466, illustrates the unhappy position of a mortgagee whose debt was found to be payable, not in gold, as claimed, but in German marks. An English mortgagee of English land, like all other creditors whose debts are payable in sterling, has, in common with holders of sterling generally, suffered a loss which so far may be considered nominal, for the purchasing value of the pound has not materially decreased. If that value does so decrease, however, he will ultimately suffer

a loss which will be the mortgagor's gain. In the utter collapse of the mark, German mortgagors were practically released from incumbrances. Without apprehending such disaster to the pound, it might be possible, if its value fell, that the repayment of a mortgage in sterling would be inequitable to the mortgagee, though he could hardly expect a court to alter his bargain for him.

The theory of a mortgage, of course, is that the mortgagee shall not be allowed to make profit from his security other than from stipulated interest, but that, in return, loss in value of the land mortgaged shall fall upon the mortgagor. As between the two, therefore, the bargain is that the mortgagee is neither to profit nor lose. With stable currency, this is ensured by repayment of principal, but, if a currency is unstable, a mortgagor may be able to repay his debt in money of less value than that he borrowed. In this way mortgages may be deprived of their attraction for investors, and it is already noticeable that the latter are tending to sell out fixed interest securities and buy ordinary shares, or "equities" as Americans call them. The reason is simple. The fixed interest may and perhaps will deteriorate in value. Thus mortgagees, including of course the holders of debentures and debenture stock, necessarily suffer if there is any considerable depreciation of currency, but trading concerns need not do so, and in fact depreciated currency may actually benefit them, at least temporarily, by increase of business. Their debenture interest also becomes a lesser burden.

The client who has money to invest is therefore likely to avoid mortgages, unless they can be so framed as to ensure against loss, as a mortgage is supposed to do. In the circumstances, the suggestion of mortgages on a gold basis may here be made. It is provided by the Currency and Bank Notes Act, 1914, that currency notes shall be legal tender for the payment of any amount. By the Currency and Bank Notes Act, 1928, bank notes are substituted for currency notes, but the principle is the same. Given therefore an ordinary debt, a creditor cannot insist on payment in gold, and it may perhaps be doubtful if creditor and debtor can contract out of these Acts. It would be possible, however, for a creditor to stipulate that he should be paid in sterling bank notes to the value of the gold which his loan might have bought. To guard himself against loss, he might even stipulate for an option to be repaid in sterling or gold value, though he might not find borrowers very ready to concede this, and there might be difficulty with a court, for it would be arguable that he stood to make a profit, and that the provision was thus against the equitable doctrine that a mortgage is redeemable on payment of principal, interest, and costs, without any clog on the redemption. There is sufficient authority, however, as for example *Mainland* v. *Upjohn* (1889), 41 C.D. 126, that a mortgagee may bargain to be repaid more than he has actually lent, and if there was a possibility of him having to accept less, owing to the fall of sterling, the fairness of such a provision would be unquestioned. Indeed, in the old form of stock mortgage, it was always possible that the stock to be replaced would have risen in value, so that a mortgagee would receive back more than the cash value of his loan, but the validity of such a mortgage was never doubted.

To make a mortgage as attractive as when the currency was anchored and therefore stable, it would be necessary that not only principal, but interest, should be paid on the gold footing. A conveyancer should find no particular difficulty in framing a provision to this end, possibly by providing for a high rate of interest, and allowing for punctual payment of a lower rate on a sum in sterling equal at the date of proper payment of interest to the gold value of the money lent.

On such terms a mortgagee would be reasonably guarded against loss, and the mortgagor, if he feared hardship owing to a drop in sterling, could give notice to pay off.

Company directors who wish to issue debentures would certainly have the better chance of placing them on this footing. In the present state of uncertainty, indeed, it may be suggested that the most attractive investment in a company is the irredeemable participating preference share, combining security of interest with participation in profits, such profits tending to increase as the value of interest payable on charges tended to decrease.

The above suggestions as to mortgages and debentures might be applied to other transactions of debtor and creditor, or involving future payment of money. For, assuming that debts must always be payable in sterling as legal tender, there is no law that the parties may not contract in different values, making their standard dollars, francs, or gold as they think fit.

That even a large depreciation of currency is not necessarily fatal to prosperity is manifest from the case of France, now a nation of vast wealth, although the franc is still worth less than one-third of its pre-war value in sterling. The equivalent would be a pound worth about a dollar, though there would certainly be confusion and misery until it was stabilised. The problem of stabilisation is one for an economist or statesman, but not a lawyer. It is the latter's duty to protect his clients' interests, and if he has protected the latter as mortgagee from all possible loss owing to currency depreciation, that duty is well carried out. It is also conceivable that, on a lease, some provision as to increase of rent if sterling fell below a certain value would save landowners from virtually making a present of part of the value of their land to tenants with long leases.

Six Sanctions for Arbitrators' Awards.

LITIGATION is sometimes preferred to arbitration under the mistaken supposition that the award of an arbitrator is difficult to enforce. Whatever other weaknesses the practice of arbitration may have revealed, the lack of sanction for the decisions of arbitrators is not, in fact, a drawback to the system.

At least six methods are available of enforcing arbitrators' awards; some of them are open to parties to the proceedings regardless of whether or not they have resorted to arbitration in accordance with the terms of the Arbitration Act, 1889 (52 & 53 Vict. c. 49).

A submission to arbitration is simply in essence an agreement by two or more parties to refer their disputes or differences, or any of them, to arbitrators—instead of resorting to courts of law by way of litigation. In other words, a submission is a contractual agreement. As such it may be made orally or in writing. An oral agreement to refer disputes to arbitration is just as valid as any other oral contractual agreement; if, however, the submission be in writing, it enjoys additional advantages and safeguards under the terms of the Act of 1889. The sanctions afforded under the statute for arbitrators' awards are additional to those under the principles of the common law.

I. Since a submission to arbitration is a contractual agreement, remedies are available against a party who fails to abide by the award similar to those which are available under the ordinary rules of contract law against a party guilty of a breach of any of his contractual obligations. Hence, an award may be enforced by an action for breach of contract; the basis of the breach to be alleged being either the failure to pay a sum of money as specified in the award, or failure to carry out any other orders contained in it, with resulting loss or damage to the other party in whose favour the award was made: *Purslow* v. *Baily* (1704), 2 Ld. Raymond's Rep. 1039, per Chief Justice Holt at p. 1040; *Lievesley* v. *Gilmore* (1866), L.R. 1 C.P. 570; *Stuart* v. *Joy* [1904], 1 K.B. 362.

II. Similarly, application may be made to the court for a decree ordering specific performance of the award.

Admittedly, resort must be had to the courts of law under these methods of enforcing arbitrators' awards; but in no event can the jurisdiction of the courts of the realm be entirely ousted from arbitration proceedings. Awards of arbitrators cannot expect to enjoy legal sanction without the intervention of the duly constituted tribunals and officers of the law. This state of affairs does not, however, lessen the value of arbitrators' awards which are enforceable without legal sanction; numerous arbitrations are conducted, and their awards regularly obeyed and executed, by all manner of bodies, e.g., trade associations, which enjoy their own peculiar sanctions, such as suspension from membership of a recalcitrant disputant, or the loss in trade prestige and credit which may result to him from failure to adhere to the rules of his association.

III. Another method of enforcing an award is available, although now seldom resorted to, viz., obtaining a rule of court ordering the payment of a sum of money as directed in the award; s. 18 of the Judgments Act, 1838 (1 & 2 Vict. c. 110) gave to such a rule the effect of a judgment of the court. See, for illustrations of this, *Creswick* v. *Harrison* (1850), 10 C.B. 441; *Bowen* v. *Bowen* (1862), 5 L.T. 685.

IV. An obstacle which sometimes besets the path of a party desirous of having an award enforced is the finding of some ground of invalidity in a portion of the award; such a party has the option to waive the invalid portion, when he becomes entitled to have the valid, severable portion enforced: *Selby* v. *Whitbread & Co.* [1917] 1 K.B. 736.

It remains to consider two other remedies which flow from express provisions of the Arbitration Act, 1889.

V. First, under s. 1. That section enacts as follows:—

"A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court or a Judge, and shall have the same effect in all respects as if it had been made an order of Court."

One of the effects of an order of court which are thus ascribed to submissions is that he who disobeys does so at peril of attachment, i.e., imprisonment. The imprisonment for defiance of an order of court is subject to termination if and when the court is satisfied that the defiant party is prepared to "purge his contempt," i.e., by tendering apologies for his defiance, with an undertaking to execute the order of the court; a party minded to defy the award of an arbitrator may thus be very effectively "brought to his senses."

A distinction must, however, be borne in mind in this connexion between an award which directs the payment of a sum of money and one which directs some other performance by the party against whom the arbitrator has found in the matters submitted to him. For, with regard to the payment of money, mere failure to pay, of itself, will rarely nowadays suffice to involve the penalty of attachment; this results from the provisions of s. 4 of the Debtors Act, 1869 (32 & 33 Vict. c. 62).

VI. Secondly, under s. 12 of the Arbitration Act, 1889. The terms of that section are as follows:—

"An award on a submission may, by leave of the Court or a Judge, be enforced in the same manner as a judgment or order to the same effect." See, also, R.S.C. Order LIV, rr. 4 B, 4 E and 4 F.

This method is not available where the award has failed to settle, without any possibility of further litigation between the parties, the rights and duties of the disputants—as was emphasised by Lord Justice A. L. Smith in *Re Willesden Local Board and Wright* [1896] 2 Q.B. 412, 417. Nor, "where there has been nothing more than a quantum or amount adjudicated upon, and no adjudication as to the liability of the person who is called upon to pay the amount": *ibid.* Such a method is inappropriate where there is scope for contention as to the invalidity in law of the award itself: *Re Boks and Company and Peters, Rushton and Company* [1919] 1 K.B. 491, C.A., per Lord Justice Scrutton at pp. 497, 498.

This method is pursued by way of an application by originating summons to have the award enforced; it is a summary method. Unless the award is clear, the method of proceeding by way of an action for breach of contract, already referred to (*supra*) is to be preferred; the summary method is, further, not available at all if the submission is merely oral, since it is dependent upon the express statutory provision. Furthermore, it must be noted that although by proceeding in an action for breach of contract the way is opened for arguments on points of law affecting the validity of the award, the path to disputes upon questions of fact found in the award is not also thereby opened. Thus, in *Walshaw* v. *Brighouse Corporation* [1899] 2 Q.B. 286, where the arbitrator had found that meat supplied, which was the subject-matter of dispute, was sound, the court declined, in an action brought on these lines, to consider the question of fact; "the arbitrator must necessarily determine it; it follows that his finding is conclusive; and it is impossible for any court to say as a matter of law" that the meat was not sound—per Lord Justice Rigby, at p. 292.

Nemesis runs Amuck.

[Contributed.]

If you make a hero of the gangster and shout the gospel of lawlessness from a thousand film screens; if you mix up politics and police; if you work on the legal system of an older civilisation, unreformed and allowed to run mad, it is not surprising that justice fails to get done.

We are moved to these observations by an article in the *American Mercury* for March, 1931, by Mr. Mitchell Dawson, under the above title. He begins with the hopeful observation: "'Dear God, send me a hanging prosecutor and a hanging judge!' should be the prayer of the criminal awaiting trial in almost any of our State courts to-day."

This delightful commencement is explained by the fact that anything from three-fifths to two-thirds of the reversals of convictions in certain States is "due to the misconduct or ignorance of the prosecutor or the trial judge, or both." By misconduct is meant "the flagrant use of innuendos and sarcasms during the trial, the introduction of improper evidence, the coercion of witnesses, unfair cross-examination and inflammatory appeals during the closing argument."

Instances are given. A district attorney will shout: "She is a negro, look at her skin. If she is not a negro, I don't want to convict her." "I have more respect for these negro witnesses than I have for these two white men who have volunteered to testify in favour of a negro that he has a good reputation." "What I have said about these two witnesses goes. I would say the same about any white man who would come into court to testify in favour of a nigger, if I was going to hell the next minute."

Another prosecutor makes the abstinence of his fellow citizens from lynching the accused the basis of a claim that it is the duty of the jury "to bring in the death penalty."

Not only the accused but his counsel is liable to abuse, for another States' attorney says: "It is said that it takes a thief to catch a thief, and it can now be said that it takes a framer and fixer to help a framer and fixer. I apply this to the worthy gentleman who has just spoken." Yet another States' attorney waves "a bloody shirt" which is not even in evidence, and cries out to the jury that its one time owner is dead and "left this blood-stained shirt for evidence as he went his way."

By way of diversity a family group is staged of mother, father and sister of the slain man in deep mourning. They sob loudly while the States' attorney tells the jury that it is their solemn duty to "vindicate the blood" of the dead man.

That this account of things is not overdone, anybody who reads American legal literature will know. Mr. Dawson quotes the *Harvard Law Review* of February, 1929, which

speaks of trial judges abusing their discretion, examining witnesses in a hostile manner, disregarding fundamental constitutional rights or elementary principles of fairness, and of States' attorneys conducting cases in a grossly unprofessional manner and asking obviously inadmissible questions merely to create prejudice against the defendant.

The American Bar Association Committee appointed to investigate the "lawless enforcement of law," describes the American people as a lawless people, and adds that lawlessness with them is not an acute but a chronic disease. Anyone reading the American Constitution would suppose that the citizens of the United States were a people guarded from every stretch of power, but it is not so. Let a man fall into the hands of the police, and he may find himself denied communication with his friends or legal advisers for many days on end, while he is beaten, starved and made to thirst. Then a chief of police will tell the public that "you cannot pamper a criminal with cream puffs"; "I am for protecting the police and kicking the criminal."

Add to the whole a press which delights in "crime waves," "gang wars," "police drives" and such like startling happenings, and you get a people more numerous and richer than any other community in the world, of exceptional virility and intelligence, allowing themselves to be the byword of the nations for scandalous inefficiency in the prevention and punishment of crime. "Clear ups" are staged with early notice to the biggest offenders. "Big boys," as chiefs of police are called in the sweet terminology of the underworld, "talk big and do nothing." It is a painful sight.

Company Law and Practice.

XCIX.

(*Continued from p.* 667.)

PROVISIONAL LIQUIDATORS.

It is well known that the winding up of a company by the court is deemed to commence at the time of the presentation of the petition for winding up, unless there has previously been passed a resolution for voluntary winding up, in which case the winding up is deemed to have commenced at the time of the passing of the resolution (Companies Act, 1929, s. 175). This provision has usually the practical effect of protecting the creditors of the company from any considerable further depreciation of the assets between the date of the presentation of the petition and the date of the winding up order, but there may be occasions on which some further protection is necessary or desirable, and it is for the purpose, or partly for the purpose, of giving such further protection, that the court has power to appoint a provisional liquidator.

The power is contained in s. 184, and, under that section, the appointment, where the proceedings are in England, may be made at any time after the presentation of the petition and before the making of a winding up order. The order for winding up appoints the Official Receiver provisional liquidator and from that moment the assets of the company are as safe as they can be, but until that point of time the way is still open for the fraudulent or the unscrupulous to defeat the proper claims of the creditors. Thus, in the case of a company whose assets are composed to any considerable extent of easily portable chattels of any value, as, for instance, precious stones, the presentation of a winding up petition might conceivably be the signal for those who were able to get at these assets to pocket them and beat a retreat. To which suggestion it may be replied that this would be an offence, and that the property thus appropriated could be recovered. Theoretically this is the case, but practically it may not prove to be so. It is generally accepted that blood cannot be obtained from a stone, and it is equally true that it is not possible to recover the equivalent of assets which have been dissipated from a person who has no resources left. Further, though extradition treaties exist between Great Britain and most countries in the world, extradition is a slow and cumbrous process, and frequently of no practical value.

Thus, one reason, and the strongest reason, for the appointment of a provisional liquidator is that there is, or may reasonably be apprehended to be, danger to the assets if they are left without being looked after between the date of the presentation of the petition and the time when an order for winding up may reasonably be expected to be made. The case of *Re Hammersmith Town Hall Co.*, 6 Ch.D. 112, is one where JESSEL, M.R., appointed a provisional liquidator to take possession of and protect the assets of the company; though it does not appear from the report what the danger to the assets was, it seems fairly clear that some danger was apprehended, and the company was apparently insolvent. In the case of *Re Marseilles Extension Railway & Land Co.* (1867), W.N. 68, it does seem that the assets were in danger; but the reported decisions do not appear to be many. A creditor who can make out a real case of jeopardy would probably have little difficulty in obtaining an appointment.

When such an appointment is made, it is the usual practice to appoint the Official Receiver, but there is no hard and fast rule that this must be done; indeed, r. 31 (4) of the Winding Up Rules recognises that a person other than the Official Receiver may be so appointed. At the present time, what is usually done is that the Official Receiver is appointed provisional liquidator, but his powers are limited to the making of an application to the court for the appointment of a special manager. The section which authorises such an application is s. 209. The form of order appointing a provisional liquidator, which is set out as Form No. 11 in the Appendix to the Winding Up Rules, provides for the limitation of the powers of the provisional liquidator. Under r. 31 the order must state the nature and a short description of the property of which he is to take possession.

As to the form which the application may take, there are two courses open to the proposing applicant: he may either move in open court, or he may apply by summons to the registrar, in either case, of course, in the winding up. Generally speaking, an application by summons is to be preferred; but, in either case, it is necessary that notice should be given to the company, though there have been cases of such urgency that an appointment has been made *ex parte*; in this latter event, however, the appointment is made, in the first instance, only for a short time, so as to enable the company to put forward such contentions as it may desire.

The step of appointing a provisional liquidator is not in any sense final, in that a winding up order may never be made on the petition, and though this is so, it will be realised that such an appointment is a matter of some moment to the company, and one likely to do it considerable harm if an order be not made; it is, therefore, necessary to be able to show a strong case for such appointment. Winding Up Rule 31 (3) provides for the payment out of the company's assets to the provisional liquidator of his costs, charges and expenses properly incurred in the event of no winding up order being made; such a provision is unnecessary for the case where an order is made, because such costs are costs of the winding up.

Where a provisional liquidator is appointed, and the petition is subsequently dismissed, some minor difficulties may arise, but FRY, L.J., in *Re Dry Docks Corporation of London*, 39 Ch.D. 306, states at p. 314 the general principle in these words: "Now the provisional liquidator's appointment is not only provisional, but contingent in this sense, that it operates to protect the property for an equal distribution only in the event of an order for compulsory winding up being made; and, if no such order be made, then his appointment ought not to interfere with the rights of third persons."

(*To be continued.*)

A Conveyancer's Diary

By H. W. CLEMENTS, Barrister-at-Law.

Appointment of New Trustees for the purposes of the Statutory Trusts.

Last week I considered the question whether an appointment of new trustees of a will was *ipso facto* effective when by reason of the transitional provisions of the L.P.A., the statutory trusts and not the trusts of the will were those upon which at the time of the appointment the trust property was held.

The reader may remember that I said that the statutory trusts superseded and took the place of the express trusts, with the result that an appointment of a trustee of a will or other instrument under which the trust property was held in undivided shares would not suffice; the appointment should be not for the purposes of the will or other instrument, but for the purposes of the statutory trusts.

I left off last week with a reference to an unreported case, *Re Wilson*, decided by Astbury, J., which was said to be an authority against the view which I expressed.

My attention has been called to an article, by an anonymous contributor, in *The Law Journal* of 15th August, and to "A Conveyancer's Letter," in the same journal of 3rd October, in both of which the case is dealt with in some detail and opposing opinions expressed regarding the decision in it. I have read those articles and seen the order made by the learned judge.

Put shortly and so far as material, the facts appear to have been as follows:—

> A testator, who died in 1911, appointed A, B and C to be trustees of his will, and devised real estate to them upon trust for persons in undivided shares, giving to the trustees a power of sale. The testator directed that upon a vacancy occurring in the trusteeship by death or retirement, D should become a trustee, and that the trust estate should in that case be transferred so as to be vested in D and the remaining trustees.
>
> On the commencement of the L.P.A. the three trustees, A, B and C, became trustees holding upon the statutory trusts.
>
> C died in 1928, and A and B issued a summons to have it determined how the legal estate in the land then held by them had vested and what was the effect of the appointment of D contained in the testator's will.

The order made by Astbury, J., declared "that on the death of C the said D became under and by virtue of the said will a trustee jointly with the said A and B of such of the said lands as then remained unsold, upon the statutory trusts as defined by the L.P.A., 1925, and that the said A and B ought to convey or assign such of the said lands as on the death of the said C remained unsold to themselves and the said D to be held by them as joint tenants upon the statutory trusts aforesaid." The conveyance directed by the order was afterwards made.

The Law Journal has furnished us with two conflicting opinions upon this decision. The anonymous writer of the article in the issue for 15th August (whom I will call Mr. X) takes one view, whilst my learned friend J.M.L. takes another.

Mr. X contends that the order made in *Re Wilson* is really inconsistent with the *ratio decidendi* in *Re Flint* and the other cases to which I referred last week, and says (in effect) that he thinks that *Re Wilson* is only an authority in that restricted class of cases where the testator has made an anticipatory appointment of a new trustee. Then he proceeds in a passage which I must quote *verbatim* for the delectation of those who can appreciate it:—

> "The decision in *In re Wilson*, if so restricted, may, it is thought, be reconciled with the principle of *In re Flint* and other cases *supra* on the ground that such a provision in the will (if given effect to, as directed in *In re Wilson*, by a vesting of the trust property in the continuing and new trustee on the statutory trusts) is a provision which does not *pro tanto* defeat, but is rather ancillary to, the execution of the statutory trusts, and is, therefore, not superseded thereby; and such a provision in the will may, perhaps, be regarded as a provision or condition (within the meaning of the Law of Property Act, 1925, 1st Sched., Part II, para. 8) to which the trustees who acquired the legal estate under the transitional provisions ought to give effect."

I venture to call that a very clever piece of work.

My learned friend J.M.L., on the other hand, regards *Re Wilson* as an authority for the proposition that, in such a case as that which we are considering, the appointment of a new trustee of or for the purposes of the will or other instrument giving rise to the statutory trusts, is an effective appointment for the purposes of those trusts. J.M.L. concludes his article as follows: "Mr. Justice Astbury showed how the tyranny of the vesting deed could be defeated in *Re Alefounder* [1927] 1 Ch. 360). He rendered a similar service as regards the statutory trusts in *Re Wilson*."

It may be permissible to observe that his lordship would have rendered the service more complete and acceptable if he had delivered a judgment which could have been reported.

Now, I agree entirely with Mr. X up to a point. It seems to me that we cannot have it both ways. Leaving aside, for the moment, the decision in *Re Flint*, I take *Bernhardt* v. *Galsworthy* as a perfectly clear authority for the proposition that when the statutory trusts have arisen the trustees holding the property at the commencement of the L.P.A., 1925, hold the land upon entirely new trusts, namely, the statutory trusts; the trusts of the will or other instrument under which the trustees were appointed are gone altogether so far as the land is concerned, even so far as to render an order of the court for administration of those trusts nugatory. I greatly admire the ingenuity of my learned friend Mr. X in his endeavour to reconcile the decision in *Re Wilson* with that in *Bernhardt* v. *Galsworthy*, and his skilful handling of the task which he set himself of doing so, but I am quite unable to see how the order in *Re Wilson* was right unless the decision in *Bernhardt* v. *Galsworthy* was wrong.

So far as regards the opinion of J.M.L., it is obvious from what I have already said that I totally disagree with it. The only authority which he can invoke is *Re Pedley*, which, as I pointed out last week, was decided before *Bernhardt* v. *Galsworthy* and *Re Thomas*, and in so far as it is in conflict with the later cases can hardly be regarded as an authority except on the precise point which arose in it. Moreover, I do not think that when properly considered, that case touches the matter at all, for all that it decided was that the power of a solicitor-trustee to charge would be applicable to the proceeds of sale of the land in the hands of the trustees. All that I am concerned with in this article is not the trusts affecting the proceeds of sale, but those which affect the land and the devolution of the land, not the destination or application of the proceeds of sale of it.

The conclusion at which I am forced to arrive is that the order in *Re Wilson* was wrongly made and cannot be supported. And I may add I do not see why it was made in that form at all. It would have been quite as well for the purposes of that application for an order to have been made appointing D to be a trustee jointly with A and B for the purposes of the statutory trusts with a consequential vesting order. Why that was not done I do not know.

Whether I am right or not in the view which I have ventured to express, it must be obvious that, as a matter of practice, it will be wise in appointing a new trustee when the property is held upon the statutory trusts to state specifically that the new trustee is appointed for the purposes of those trusts.

Landlord and Tenant Notebook.

By W. R. E. BORREGAARD, M.A., Barrister-at-Law.

New Reversioners and Rent.

The statutory provisions governing the payment of rent when the landlord's interest is transferred *inter vivos* deserve careful study, both as regards scope and as regards machinery. L.P.A., s. 151 (1), replaced 4 Anne c. 16, s. 10, which, following on a section dispensing with attornment, provided "no such tenant shall be prejudiced or damaged by payment of rent to any such grantor or conusor, or by breach of any condition for non-payment of rent, before notice shall be given to him of any such grant by the conusee or grantee." The sub-section of the 1925 Act, having dealt with attornment, goes on: "Nothing in this sub-section (i) affects the validity of any payment of rent by the lessee to the person making the conveyance or grant before notice of the conveyance or grant is given to him by the person entitled thereunder; or (ii) renders the lessee liable for any breach of covenant to pay rent on account of his failure to pay rent to the person entitled under the conveyance or grant before such notice is given to the lessee."

As regards scope, it is clear that both the old and the new enactment were designed primarily to protect punctual payers; but in each case there is a qualified saving. The older statute makes an early gesture towards Equity by prohibiting forfeiture until notice of the change has been given. The present Act would prevent the new landlord from issuing a writ for rent due based on a covenant in similar circumstances, or from claiming possession on the ground of failure to observe the covenant; but it is certainly arguable that if there is a simple proviso for re-entry on rent being in arrear, without reference to covenant, he would be able to pursue his remedy; and suppose that, relying on the reddendum and not on any covenant, he went to collect rent on the premises on the day on which it was due, not having notified the change, and payment were refused—would the second clause help the defaulting tenant? Lastly, neither the repealed statute nor the L.P.A. interferes with the right to distrain; so that, even if the present provisions cover forfeiture, all that can be said is that we have another illustration of the inevitability of gradualness, and another two centuries must be expected to elapse before the unpunctual tenant, who may possibly be in doubt as to the identity of his landlord, is protected against a distress. This seems a pity, because the L.P.A. was intended to do away with the last vestiges of the feudal system. It is also a pity because, while the best advice one can give to a tenant is to pay his rent punctually to the last known landlord, many tenants are unable to seek advice; and of these a large number belong to the class who always consider themselves personally aggrieved when "the house has been sold over their heads," as if the ground had thereby been swept from under their feet. The present position is that a tenant who suspects a change and, being ignorant of the law, follows the principle of "*In dubio, abstine*," may get an unpleasant surprise if a change has been effected and the new reversioner subscribes to the principle of "*Oderint dum metuant*."

The procedure which the new landlord who desires to deprive the tenant of any excuse is to follow is fairly rigidly prescribed; notice must be given, and by him. Mere knowledge from another source will not serve the purpose, though it seems possible that under the operation of the law of agency a notice given by the old landlord would be capable of being ratified. But while by s. 205 (1) (xvii) "notice" includes constructive notice, that sub-section is governed by the words "unless the context otherwise requires," which in this case it clearly does. Hence the provision in s. 196 (1), by which any notice required or authorised to be sent or given must be in writing, would apply. But on the authority of *Cook* v. *Guerra* (1872), L.R. 7 C.P. 132, it can be said that the notice need not be very explicit and that the person giving it is entitled to rely to some extent on knowledge which the tenant is known to possess. The defendant was a tenant who had taken a long lease and had rashly advanced his original landlord a considerable amount on account of rent. Someone else then put forward a claim for possession, while the landlord mortgaged the reversion to the plaintiff. The plaintiff ultimately induced the rival claimant to withdraw, and his solicitor then wrote to the defendant advising him of that fact and requesting him "to have the kindness to pay the rent here on Monday." It was held that as from the date of that letter the plaintiff was entitled to rent. "The question is not whether the letter gives such notice in terms, but whether, from the letter and the circumstances, the court ought to infer that the letter brought such knowledge to the mind of the defendant or his attorney or both," said Brett, J.

The directions as to notice avoid such doubts arising as were expressed by Mr. Aggs with regard to the somewhat similar provision of the Agricultural Holdings Act, 1923, s. 57 (4). This sub-section, which was added by the amending Agriculture (Amendment) Act, 1923, enacts that "unless and until a tenant shall have received notice that the person entitled to receive the rents and profits (hereinafter called 'the original landlord') has ceased to be so entitled . . . any notice, demand, etc., which the tenant shall serve upon . . . the original landlord shall be deemed, etc." Mr. Aggs points out, in thick type, that the notice need not be in writing; and adds that the Act is silent as to whose duty it is to give the notice, whether the "original landlord" or the new landlord. Possibly the answer is that notice simply means knowledge—after all, the sub-section does not say "a notice"—and certainly no duty appears to have been created.

Our County Court Letter.

By R. W. FRAZIER, Barrister-at-Law.

HOSPITALS AND PAYING PATIENTS.

In two recent cases the court has in effect undertaken the taxation of a hospital's bill of costs. In *Abertillery and District Hospital* v. *Hopkins*, recently heard at Abertillery County Court, the claim was for £16 16s., being the balance of an account for treatment as an in-patient. The defendant (a bank cashier) was not a subscriber, and had paid £52 10s. on account of a bill for £69 6s., this being the amount due (at 6 guineas a week) for a private ward, in which the defendant had asked to be placed. The defendant's case was that (1) having been discharged on one occasion against the opinion of the sister, he was delirious the same night and had to be re-admitted a month later, but (2) had he known of the above charges, he would have arranged to go elsewhere for about 3 or 4 guineas a week, which was the usual charge. His Honour Judge Thomas held that the above charge for a private room, with adequate medical attention, was not unreasonable for a man in the defendant's position, and judgment was therefore given for the amount claimed, payable at £2 a month. See further a note entitled "Hospital Treatment of Infectious Diseases," in the "County Court Letter" in our issue of 26th September, 1931 (75 Sol. J. 642).

DIVERSION OF ARTIFICIAL WATERCOURSES.

(*Continued from* 75 Sol. J. 404.)

II.

In *Bell and Others* v. *Bates*, recently heard at Oxford County Court, the plaintiffs claimed damages and an injunction in respect of the water supply to their cottages, which was derived from a pump (supplied by a pipe) from a well on the defendant's property. The title was based upon prescription from time immemorial, or under the Prescription Act, 1832,

s. 2, as having been enjoyed as of right without interruption for twenty years, or alternatively for forty years before action brought. The owner of one of the cottages stated that, after living there for fifteen years, she had acquired it under the will of her grandmother forty-eight years ago, during which periods (1) there had always been an ample water supply, even in drought; (2) the pump and pipe had been repaired by the tenants and owners of the cottages, with the permission of the owners for the time being of the defendant's property. Evidence was given that, in consequence of complaints, the well was examined, and was found to be hollowed out of solid rock to a depth of twenty-six feet, the contents amounting to about 450 gallons, which was enough to supply the plaintiffs' cottages and also those of the defendant. The latter contended, however, that he had installed a new pump, but, in conseqence of further complaints from his tenants of a shortage, he had measured the water, and found only nine inches at the sides and eighteen inches in the centre. In order to safeguard the supply to his own tenants, the defendant had therefore bored a hole in the pipe leading to the plaintiffs' cottages, as he considered that he was the sole owner of the water and had not acted maliciously. His honour Judge Randolph, K.C., gave judgment for 30s. damages, made an order for the restoration of the water supply within a month, and granted an injunction against any further obstruction or diversion.

SOLICITORS' RIGHTS AND LIABILITIES.

(*Continued from* 75 Sol. J. 113).

II.

In *Carnley* v. *Smith*, at Louth County Court, the claim was for £21, the amount of an unpaid bill of costs, liability for which was disputed on the grounds of extortion, negligence and misrepresentation. The claim arose out of another action, in which the defendant (having first appeared in person to defend a builder's claim for £72) had eventually retained the plaintiff, who prepared a counter-claim for £66 2s. This amount was fixed as the result of a surveyor's report, but the defendant considered it should have been at least £150, and he disagreed with the advice of the plaintiff and the surveyor to decide the builder's claim by arbitration. His Honour Judge Langman observed that the defendant had not substantiated his allegations (which had no shadow of evidence in support), and the defence had been improperly filed, as the plaintiff had taken considerable care over a difficult action. Judgment was therefore given for the sum to be found due on the bill (after taxation by the registrar) with costs.

OUSTER OF COURT'S JURISDICTION.

The validity of an arbitration clause was considered in a recent case (*Cartwright* v. *Goulson*), at Grantham County Court, in which the claim was for £4 10s. as wages for work done. The plaintiff and another man, having lifted two acres of sugar beet in four days, had asked for an advance on account, but the defendant, after pleading poverty, had threatened to shoot them. The plaintiff, having also failed to get satisfaction at the Kelham sugar beet factory, had begun the above action, but the defendant relied upon a signed agreement. This provided for the lifting and cleaning of fourteen acres at 45s. per acre, but any disputes between the labourer and grower were to be referred to arbitration, so that the court had no jurisdiction. His Honour Judge Langman observed that the agreement was entirely in the grower's favour, as the labourer was only entitled to payment on completion of the work, and had no right to ask for an advance. Any labourer should investigate such an agreement before signing it. but the action must be nevertheless stayed, no order being made for costs—as the court would retain cognisance of the case, either party to have liberty to apply. His honour advised the defendant to apply to the agricultural officer at Kelham to act as arbitrator.

Practice Notes.

THE DEFINITION OF "DRY ROT."

In *Whiteley* v. *Bishop*, recently heard in the Liverpool Chancery Court, the claim was for the rescission of a contract for the purchase of a house (on the ground of misrepresentation) and for the return of the deposit of £85. The defendant's case was that (1) he had made no representation, (2) the house was not defective owing to dry rot as alleged, (3) he was therefore entitled to (and counter-claimed for) specific performance. A university professor gave evidence that there was no fungus of what was technically dry rot, as the fungus on the under-surface of a floor board was revealed under the microscope as an inactive fungus, due to the use of unseasoned timber, but the latter had ceased to deteriorate. The Vice-Chancellor (Sir Courthope Wilson, K.C.) held that the question was not to be approached from the scientific standpoint, as, in ordinary business, an architect or builder knew what he meant by dry rot, which was fatal in any house. The misrepresentations (though innocent) had been established, and judgment was given for the plaintiff on the claim and counter-claim, with costs.

Correspondence.

Liability of Assignee under Repairing Covenants.

Sir,—I have been acting for a corporation in its capacity of executor under a client's will. The testator left, among other assets, a leasehold house in the West End, held on lease, with about twenty years unexpired, which he specifically bequeathed to a relative.

Before assenting to the bequest, or assigning the property, the executor raised the question of its liability under the repairing covenants of the lease, and I was asked to obtain counsel's opinion thereon.

I was instructed to put to counsel the following points, namely:—

(1) If the time for external and internal painting synchronised with the period during which the executor remained assignee of the property was the executor liable to do the painting?

(2) As regards the general repairs was the executors' liability limited to dilapidations which could be shown to have accrued within the period during which he remained assignee of the property, or did it extend to the whole of the dilapidations which would have accrued at the date when he assigned the property?

The opinion of counsel (a highly esteemed member of the Chancery Bar) was that the executor was responsible for both sets of repairs to the fullest extent and would not be able to escape the liability by assenting to the bequest or assigning the property to the person entitled under the will.

Counsel's authority for this advice is the decision of Walton, J., in the case of *Plummer* v. *Johnson*, 18 T.L.R. 316.

If counsel's views as to the application of the decision in that case are correct, the result is likely to be disastrous to the devisees of short leaseholds as, unless such devisees are able to stand the cost of the repairs, such properties would have to be sold and the proceeds held as against possible subsequent liability.

Again, if these views are correct, all one's preconceived notions of the extent of an executor's liability are swept away. In days gone by we used to be taught that an assignee can always be quit on his liability in respect of leaseholds with onus covenants by assigning to a man of straw, and I believe there is a decision to the effect that it is the positive duty of an executor to assign such leaseholds to such an individual in order to relieve himself and the estate from liability. If then

the decision of Walton, J., is to have this far-reaching interpretation, such assignments are surely useless.

I may add, in conclusion, that the report in the case of *Plummer* v. *Johnson* is not altogether satisfactory, and moreover, the case was one in which the assignee (who, by the way, was not an executor) assigned after notice of repair had been given without making any attempt to comply with the notice.

Possibly you may think it worth while, in view of the importance of the point at issue, to refer to it in your conveyancing notes.

London, E.C.3. E. S. Woodroffe.
1st October.

Sir Thomas Wilde, C.J.

Sir,—Wilde was indeed "laborious."

It is said of him, and truly, that he had the genuine gift of absorbing himself heart and soul in the affairs of those who retained him, of believing absolutely in the justice of their cause.

"On their behalf no drudgery was too great, no labour too exacting. The client whose life, whose fortune, whose hopes of happiness were at stake, felt that every pang which racked him was shared by his advocate."

In *Small* v. *Attwood*, referred to in your interesting note in your issue of the 10th October, at p. 670, the Serjeant's instructions were contained in several large wooden boxes full of papers, accompanied by a fee of 4,000 guineas. His speech in the House of Lords occupied eleven days.

Gray's-inn, W.C.1. J. Rowland Hopwood.
12th October.

In Lighter Vein.

The Week's Anniversary.

On the 21st October, 1274, died John de Verdun, one of those warrior judges under whose vigorous hands English law first emerged rough-hewn from the chaos of the Dark Ages. In 1260 he was appointed a Justice Itinerant for Shropshire and Staffordshire. During the civil wars of Henry III, he stood by the King, and after the battle of Evesham was employed in pursuing the last of the rebellious barons. On the work of such as he Mr. G. K. Chesterton makes a penetrating comment which requires but little qualification. "What we call the judges' circuits were first rather the King's raids. For a time the criminal class was so strong that ordinary civil government was conducted by a sort of civil war. When the social enemy was caught at all, he was killed or savagely maimed. The King could not take Pentonville Prison about with him on wheels." In 1270, de Verdun took the Cross as the great soldier-lawyer Glanville had done before him, and followed Prince Edward on the Seventh Crusade.

A Warm Reception.

A woman was recently bound over at Rochester for assaulting a rate warrant officer. Seconded by her four children and her dog, she beat him and bit him, shouting, "Get the gun! Get the gun!" This her young son actually did, levelling the weapon within a couple of feet of the officer's face. These eccentric proceedings irresistibly recall an incident of a similar character, described in a delightfully ingenuous affidavit once filed in the Irish Court of Common Pleas. Thus it ran: "And this deponent further saith that on arriving at the house of the said Defendant, situate in the County of Galway aforesaid for the purpose of personally serving him with the said writ, he, the said deponent, knocked three several times at the outer, commonly called the hall, door, but could not obtain admittance; whereupon, this deponent was proceeding to knock the fourth time, when a man to this deponent unknown, holding in his hands a musket or blunderbuss loaded with balls or slug, as this deponent has since heard and verily believes, appeared at one of the upper windows of the said house and presenting the said musket or blunderbuss at this deponent, threatened that if the said deponent did not instantly retire, he would send his (the deponent's) soul to Hell, *which this deponent verily believes he would have done* had not this deponent precipitately escaped."

Lullaby.

It is reported that a complaint by the prosecuting counsel has been lodged against a juror who in the course of a murder trial at Prague went to sleep and only woke up in time to return a verdict of "Not guilty." One would hardly have thought that it was for counsel to complain if they failed to keep their audience awake. Such, at any rate, was the moral of an old story of the Northern Circuit according to which during an extraordinarily dull speech by an extraordinarily dull counsel, Sir Thomas Davenport, a boy, perched in the public gallery at York Assizes, fell asleep, lost his balance and was killed. Sir Thomas was subsequently indicted at the Bar Mess for murdering him "with a certain blunt instrument of no value, called a long speech."

A Thug's Meditations.

A new play in London is salvaging from oblivion the story of Burke and Hare, the body-snatching thugs who horrified Edinburgh a century ago. Hare, who turned King's evidence, escaped the rope but lost his sight by being thrown into a lime pit by a gang of indignant workmen. Subsequently, as a blind beggar, he used to be pointed out as one of the chief sights of Oxford-street. Burke was sentenced to death on Christmas Day, 1828, after an uninterrupted trial of twenty-four hours, the speech for the defence having commenced at 3 o'clock in the morning. In the condemned cell, he exhibited a strange mixture of pious repentance and worldly anxiety. Thus, after a long silence, when he seemed to have been meditating on eternity, he suddenly burst out with: "I think I am entitled to that £5 from Dr. Knox which is still unpaid on the body of the woman Docherty." The chaplain pointed out that the surgeon had lost on the transaction, since the body had been taken from him. "That was none of my business," retorted Burke, "I delivered the subject and he ought to have kept it." Then he mused on: "I have got a tolerable pair of trousers and since I am to appear before the public, I should like to be respectable. I have not a coat and waistcoat that I can appear in, and if I had got the £5 I could buy them." The surgeon who purchased the victims' corpses was linked with the murderers in the execration of popular rhymes.

"Up the close and down the stair
But and ben wi' Burke and Hare
Burke's the butcher, Hare's the thief
Knox the boy that buys the beef."

Reviews.

The Tragedy of R.101. By E. F. Spanner. London: E. F. Spanner, 9, Billiter-square. Two Vols. 42s. net each.

Mr. Spanner is a retired member of the Royal Corps of Naval Constructors, a Fellow of the Society of Consulting Marine Engineers and Ship Surveyors, and has other high qualifications as a naval architect. He has applied himself to, and written extensively upon, aerodynamical problems.

He is thoroughly dissatisfied with the findings of the Court of Inquiry into the loss of R.101, and holds that they are contrary to the evidence. He concludes that the airship

broke her back in the air owing to serious structural weakness.

These two volumes show that he has made a most thorough examination of the evidence, which he is well qualified to evaluate. He has published them himself, one cannot but suppose at financial loss, because he feels strongly that his views should be before the public, especially before those qualified to judge between him and the official report.

The reviewer does not pretend to be an expert in the matters here discussed, or indeed to have studied them with a fraction of the special equipment necessary; but, as a member of the public addressed, he feels that the two volumes should be read and compared with the official report by all those to whom the subject is of importance. For Mr. Spanner's conclusions as to the cause of the loss are disturbing indeed. A head-on gust caught the ship and brought part of her into pressures proper to a through-the-air speed of 102 miles an hour, exerting a rapid and increasing downward pitching action. The elevators being gradually put up to a fully-up position to correct the downward pitch, the lower structural members began to fail in the new bay. Eventually they failed completely, and she settled to the ground with her axis bent from the straight. The forward starboard engine car swung round in a forward direction and ran through the envelope into the gasbags, so causing the fire.

Mr. Spanner complains of the subsequent exaggerated statements in Parliament by those concerned to defend the policy which produced the R.101. No intelligent person will take much notice of them. They have the intended soothing effect upon the uninformed and those unaccustomed to weigh evidence. No one will build on that kind of sand for the eyes. We feel sure that if rigid commercial airships are again attempted, his valuable contribution to the subject will not be neglected even by his technical opponents.

Scrutton on Charter-parties. By S. L. Porter, M.A., K.C., of Emmanuel College, Cambridge, and of the Inner Temple, and W. L. McNair, LL.M., of Gonville and Caius College, Cambridge, Barrister-at-Law, of Gray's Inn. Thirteenth Edition. 1931. Royal 8vo. pp. lxxxviii and (with Appendices and Index), 621. London: Sweet & Maxwell, Ltd. 33s. net.

Excellence of arrangement contributes enormously to the real value of a legal text-book, for however commendable it may otherwise be by virtue of the quality of the matter, it must, without a pleasing and useful orderliness, lose much of its potential value. This book—an old and valued friend of proved utility—lacks nothing in the conciseness and clarity of its make-up. The 162 articles with, in many cases, explanatory illustrations supported by the relevant authorities, deal adequately with the varied and oft-times difficult propositions of law relating to the carriage of goods by sea. The laboured search for a particular point—always an irksome task—is entirely obliterated; simplicity is the keynote. Since the last edition was published, in 1925, the work has been carefully revised throughout and further matter, necessitated in part by the decisions resulting from the Carriage of Goods by Sea Act, 1924, has been added, and, where changes in or amplifications of the law have required it, portions of the book have been re-written. With its useful appendices, dealing, *inter alia*, with both English and Dominion Statutes on the subject, and with its seventy-two pages of detailed indexing, the work is nothing less than essential to the practitioner of this branch of the law.

Books Received.

The Judicial Dictionary of Words and Phrases judicially interpreted and of Statutory Definitions. F. Stroud, Recorder of Tewkesbury. Supplement by Elsie May Wheeler, Barrister-at-Law. Medium 8vo. pp. cxii and 1036. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. £2 2s. net.

Reports of Cases decided under the Railway and Canal Traffic Acts and the Railways Act. Eric F. M. Maxwell, Barrister-at-Law. 1931. Vol. XX. Medium 8vo. pp. xx and (with General Index to Vols. XIII to XX). London: Sweet & Maxwell, Ltd. £2 5s. net.

Chitty's Forms of Civil Proceedings in the King's Bench Division of the High Court of Justice and on appeal therefrom to the Court of Appeal and the House of Lords. Sixteenth Edition. By Philip Clark, Head Clerk of the Action Department, Central Office of the Supreme Court. Assisted by P. J. Bowie and H. Hinton. 1931. Medium 8vo. pp. liii and (with Index) 1182. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. £2 5s. net.

Notes of Cases.

High Court—King's Bench Division.

W. T. Lamb & Sons *v.* The Goring Brick Co. Ltd.

Wright, J. 14th October.

Contract—Sale of Bricks—Sole Agency—Cancelled—Sold by Manufacturer—Claim for Damages.

The plaintiffs in this case, W. T. Lamb & Sons, builders' merchants, claimed from the defendants, The Goring Brick Company, Ltd., damages for the alleged breach of a written agreement, dated 21st April, 1927, whereby they were appointed for a period of three years the "sole selling agents of all bricks and other materials manufactured" by the defendants at their works. The alleged breach was contained in the terms of a letter from the defendants to the plaintiffs, dated 25th September, 1929, in which the defendants said: "Mr. Brackley intends to sell all the bricks manufactured in the future without the intervention of an agent . . ." The plaintiffs thereupon brought the present action. The defendants denied liability, and contended that the agreement of 1927 did not deprive them of the right to sell bricks themselves.

Mr. Justice Wright said that he thought it a fair construction of the agreement that the intention was that the manufacturing or producing part of the business being in the hands of the defendant company, the merchanting or selling part of the business was to be entrusted to the plaintiffs. In his judgment the words in the contract "appointed the plaintiffs sole selling agents," meant that the plaintiffs were to have the sole right of selling all the bricks manufactured by the defendant company. Referring to *Bentall Horsley and Baldry* v. *Vicary*, 74 Sol. J. 862; [1931] 1 K.B. 253, his Lordship said that Mr. Justice McCardie took the view that on that special contract, in order to justify the plaintiffs' contention, it must be found that a special term was to be implied of a negative character indicating a prohibition against a sale by the defendant; and he found on the facts that he could not imply any such term. That might very well be the appropriate view to take in that case, but he (Mr. Justice Wright) thought that there was no need to imply any term in the present case, as the matter could properly be decided on the language of the contract. There would be judgment for the plaintiffs, with costs, the damages to be referred to a Master if not agreed.

A stay of execution was granted.

Counsel: *Serjeant Sullivan*, K.C., *Maurice Healy*, K.C., and *Reginald T. Sharpe*, for the plaintiffs; *E. H. Blain*, for the defendants.

Solicitors: *A. M. Longhurst & Butler; Burton, Yeates and Hart*, Agents for *Charles, Malcolm & Wilson*, Worthing.

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Restrictive Covenant not to Erect—Applicable to Alteration of Building Property erected.

Q. 2308. A, the purchaser of a plot of building land containing about an acre, covenanted with the vendors and their heirs and assigns that he and his heirs and assigns would not at any time erect upon the said plot or any part thereof any buildings other than good and substantial detached or semi-detached dwelling-houses, with suitable outbuildings to be occupied therewith at the rear thereof, without the previous consent in writing of the vendors. The vendors are still owners of an adjoining plot of land which is not yet built upon. Would it be a breach of this covenant for A or purchasers from him to alter the dwelling-houses erected on the plot by putting in shop fronts and using them as shops? There are many reported decisions as to breach of similar covenants by erecting a separate building in its entirety, such as a studio or workshed, but I can find no case showing whether or not the mere alteration of a building already erected in accordance with the covenant is a breach of such covenant. Can you refer me to any decision on this point? It is important to notice that there is no covenant or stipulation as to the continued user and maintenance of the buildings as private dwelling-houses. The covenant refers merely to the "erection" of dwelling-houses.

A. We do not think there has ever been any doubt that the alteration of a building originally built in accordance with the covenant to a form which would have been a breach of the covenant, if the building had been erected in that form, is a breach of such a covenant as mentioned. This seems to have been definitely so held in the Irish case of *Bray* v. *Fogarty* (1870), Ir.R. 4 Eq. 544. See also *Wright* v. *Berry* (1903), 19 T.L.R. 259, where injunction was refused to another purchaser on the ground there was no building scheme.

Will—Trust for Sale—Provision entitling Life Tenant of Proceeds to occupy a House subject to the Trust—"Immediate Binding Trust for Sale."

Q. 2309. Testator dying since 1925 devised his real estate and bequeathed the residue of his personal estate to his trustees (his wife and another) upon the usual trust for sale giving income of investments to wife for life. Power to trustees to postpone sale and conversion, with usual provision as to income being applied in the same way as income from investments of converted property. He then directed that his wife should be entitled to occupy his house during her life or for any less period she might desire. Does the last provision operate to prevent there being an immediate binding trust for sale so as to make s. 1 (7) of S.L.A., 1925, as amended by L.P. (Amend.) Act, 1926, inapplicable?

A. We express the opinion that if the provision, as appears to be the case, places the widow in a position to prevent a sale, then there is not an immediate binding trust for sale, and that a settlement exists. A precedent of a provision authorising residence in a house subject to a trust for sale will be found on p. 526 of the 21st ed. of "Davidson's Concise Precedents in Conveyancing," and another on p. 376 of "Bythewood and Jarman's Conveyancing Precedents," 2nd ed., Vol. II. The former precedent provides that the life tenant of the proceeds of sale "may" occupy the premises for life or a less period, while the latter limits the right to such time as the premises are sold. Both these precedents do not confer actual rights upon the life tenant of such a nature as to stand in the way of an immediate sale, but the form employed in the will under consideration expressly states that the life tenant is "entitled" to reside in the premises, and this, in our view, would prevent an immediate sale (except, of course, subject to her rights).

Mortgage under Small Dwellings Acquisition Acts—Insurance.

Q. 2310. Section 3 (1) (*c*) of the Small Dwellings Acquisition Act, 1899, provides as follows: "The house shall be kept insured against fire to the satisfaction of the local authority and the receipts for the premiums produced when required by them." In the mortgage deed the proprietor covenants with the council that he will keep the mortgaged premises insured against fire to an agreed amount "in the joint names of the proprietor and the council," and the mortgage provides as follows: "All premiums and moneys necessary for effecting and keeping up such insurance will be paid by the council and the proprietor hereby covenants that he will repay the amount of such premiums and moneys to the council upon demand." The premises have hitherto been insured with a company selected by the mortgagor and approved by the council. The council now desire to transfer all the insurance policies on freehold properties mortgaged to them under the Act to a company selected by them. A mortgagor contends that the council have no power to vary the insurance in these circumstances. Your opinion as to whether the council have such power will be appreciated.

A. The sub-section quoted gives, it is considered, the power to the borrower to insure in such responsible office and to such an amount as the local authority may reasonably require. Compare *Tredegar* v. *Howard* [1929] A.C. 72, and particularly Lord Blanesburgh's dissenting judgment. Moreover the covenant itself is not expressed in such terms as to entitle the council, whenever it wished, to change an approved office. Further, s. 2 (*e*) of the Act of 1899 provides that the deed shall not contain anything inconsistent with the provisions of the Act. The covenant that the council shall pay the premiums and that the borrower shall repay is obviously inconsistent with the production by the borrower of the receipts on demand, as provided for in s. 3 (1) (*c*). The opinion is given, therefore, that the borrower can rightly object to the demand of the council.

Rent Restriction Acts House Let with Land.

Q. 2311. On 15th February, 1919, a house, garden and land were let on a yearly tenancy at a rental of £25 per annum, the tenant doing repairs and paying rates. The total area is just over six acres. The rateable value of the house in 1914 was £5, and of the land £17. The tenant sub-let the house and now only retains the land. Are we correct in advising our client: (1) That the property is not within the Rent Restrictions Act; (2) that the property is within the Agricultural Holdings Acts, and on the expiration of a notice to quit the tenant subject to the giving of the necessary notice is entitled to one year's rent, namely £25; (3) that the landlord may give notice to the tenant that if he remains in occupation an increased rent may be charged.

A. (1) This is correct. (2) If the property had been let after 31st December, 1920, the assumption would have been

correct, subject possibly to reduction of compensation to a proportion of the total rent equivalent to the value of the and: Agricultural Holdings Act, 1923, s. 33. As the letting was before the date mentioned, it is not quite clear that the holding is within the Act. If it was intended that the house should be let as a residence for the person occupying and cultivating the land, the house would apparently be included in the "holding." If they were two distinct entities with no necessary connection it is considered the property would not constitute a holding. See and consider *Lancaster and Macnamara* [1918] 2 K.B. 472. (3) No. The landlord must either give the statutory year's notice to quit unqualified, or leave the tenant in possession at the existing rent. He can, however, accompany his notice to quit by another that, if the tenant wishes to retain possession after the expiration of the tenancy he can do so at a yearly rent of £x. The second notice can be in the same document, but it is advisable it should be separate: *Ahearn* v. *Bellman* [1879] 4 Ex. D. 212.

Articles of Association of Private Company.

Q. 2312. I have been asked to act in the conversion of a partnership business into a private limited company. The partners in the firm are husband and wife, and they propose making their son a co-director in the proposed company. Special provisions not common to company matters are desired to be inserted in the articles, and your esteemed opinion is requested on the efficacy and legality of the following proposed clauses in the said articles: (1) "No shares in the capital of the company shall be transferred without the consent of another director." (2) "The company's affairs to be entirely dependent upon the decision of two directors." (3) "Any dispute between two directors to be settled by the remaining directors." (4) "No director to pledge his shares without the consent of another director." Is it in order to insert these clauses? With regard to the son who is going to be made a director of the company, he is to pay £1,000 for his 1,000 preference shares and is also getting 500 ordinary shares for services rendered by him to the firm. Will it be necessary to file a contract of allotment as respects his shares, and if so will you kindly refer me to the correct form? Another point upon which your learned opinion is asked is that in the event of the son getting married will he be able to transfer his shares to his wife by deed of gift or by way of marriage settlement?

A. All the proposed clauses will be valid, but: (1) The consent should be that of the directors as a whole, unless the governing director (e.g., the husband) is designated. The clause, as drawn, does not specify the director whose consent is to be asked. (2) It is again desirable to specify which two directors. The phrase "entirely dependent" will, of course, not confer absolute powers upon the two directors, and their decisions cannot derogate from the statutory rights of the other shareholders. (3) It is to be observed that the settlement of any dispute cannot encroach upon the statutory rights of the shareholders. The latter can apply to the court for an injunction to restrain the adoption of any unfair procedure. (4) The particular director should be specified. On the remaining queries raised: (1) It will be necessary to file a contract as regards the son's ordinary shares, but the contract need not be in writing, and particulars may be filed pursuant to the Companies Act, 1929, s. 42 (2) upon forms obtainable from the Solicitors' Law Stationery Society, Limited. (2) The son on marriage will be able to transfer his shares by gift or marriage settlement, subject to the transferees (or trustees) being approved by the directors. The latter should also be empowered to require the insertion of any necessary clauses in the deed of gift (or marriage settlement) regulating any dealings with the shares. Valuable guidance on the above subject (and special precedents) will be found in the "Treatise on the Conversion of a Business into a Private Limited Company" (5th ed.) published at 12s. 6d. by the Solicitors' Law Stationery Society, Limited, 22, Chancery-lane, W.C.2.

Judicial Declaration of Death.

Q. 2313. I was much interested in your paragraph under "Current Topics" in your issue of the 22nd August, 1931, bearing on the above, as I have a client who married an Australian soldier who returned to his own country without her, and from whom she has not heard for over twelve years. I shall be glad to know if we have any provision for a declaration being made that a person who has not been heard of for a certain number of years must be regarded as dead, and, if so, shall be obliged if you will kindly indicate a work in which I may find set out the necessary steps for obtaining such a declaration.

A. The subject of presumptive proof of death is fully dealt with in Mortimer's "Probate Law and Practice."

The Workmen's Compensation Act, 1931.

Q. 2314. In June, 1930, a workman employed as a driver of a motor lorry met with an accident in the course of his employment, which fractured his wrist. He was totally incapacitated for several months and received full compensation under the Workmen's Compensation Act. It may be assumed (*a*) that he will never sufficiently regain the use of his wrist to enable him to follow his occupation at the time of the accident, and (*b*) that it is probable, but for the continuing effects of the injury, he would be able to obtain work as a motor lorry driver. He had recently sufficiently recovered as to be able to do work of a light character and obtained temporary work as a night-watchman for a local authority which lasted for ten weeks and has now ceased. During such period of temporary employment it is assumed that he is entitled to compensation on the basis of 50 per cent. of the difference between his weekly earnings as a night-watchman and his average pre-accident earnings. Now that he is out of employment, can it be said that he has "failed to obtain employment" and so be entitled under the Workmen's Compensation Act, 1931 (passed 11th June, 1931) to apply for an order that his incapacity be treated as total incapacity? If not, and he is only entitled to compensation on the basis of partial incapacity, does the receipt of such compensation disqualify him from unemployment insurance benefit?

A. As the applicant was a driver of a motor lorry, it is apprehended that the maximum weekly payment for total incapacity amounted to 25s. a week or upwards. The assumption at the end of the third paragraph of the question is therefore correct. The expression "has failed to obtain employment" in the above Act does not refer to the whole period since the accident, but merely refers to the position at the time of the application for arbitration. Any other interpretation would cause a disqualification for compensation, by reason of the fact of the workman having obtained temporary work as a night-watchman. This is evidently not the intention of the Act, which is designed to encourage temporary employment, as appears from proviso (i). The night-watchman's post is the best proof, under the proviso, that the workman has taken all reasonable steps to obtain employment. The first question is therefore answered in the affirmative. The second question does not arise at the moment, but, if the workman should fail to establish total incapacity, the opinion is given that compensation based upon partial incapacity would not disqualify him from unemployment insurance benefit. The reason is that proviso (ii) in the above Act only applies to cases of total incapacity, in which event the workman is logically not capable of work. Proviso (ii) was apparently inserted *ex abundante cautela*, as (1) a workman in receipt of compensation is required, under the Unemployment Insurance Acts, to prove himself capable of and available for work as a condition of receiving unemployment benefit; (2) he would have difficulty in discharging this onus of proof if in receipt

of compensation on a basis of total incapacity. If only partially incapacitated, however, he might prove himself capable of, and available for, light work, and therefore qualified to receive unemployment benefit.

Partial Intestacy—Next of Kin—When Ascertained.

Q. 2315. A testator dies in 1920. In 1930 it is found in the events that have happened that there was in his will a possible intestacy which the events of 1930 have shown to be a reality. We shall be grateful if you will tell us of an authority fixing the date at which the next-of-kin must be chosen, e.g., that of the death or that at which the intestacy comes into being. In *In re Soper* [1912] 2 Ch. 467, it was assumed that the next-of-kin were those at the death of the testatrix, but there there was no incipient intestacy. *In re MacKee* [1931] 2 Ch. 145, seems to point to the date of the death.

A. We cannot trace that this point has actually been the subject of judicial decision. We express the opinion that the next-of-kin are to be ascertained as at the death. We submit that it is a misconception of the position to speak of an incipient intestacy. The position is rather one of contingent intestacy. On the death of the testator his next-of-kin acquired certain contingent rights, and could have negotiated a sale of them or a loan on them, the purchaser or mortgagee being protected by appropriate insurance against the happening of the events which would defeat their contingent rights. If the position is looked at from that angle we do not think that our subscribers will feel any doubt that the death is the time for ascertaining the next-of-kin. A consideration of s. 1 of the Executors Act, 1830, will, we consider, reinforce this view. The persons entitled under the Statute of Distributions there referred to are ascertainable on the death of the testator and partial intestate.

Income Tax—Subsidy Part of the Profit.

Q. 2316. A is a builder, auctioneer and general dealer. In 1927 he built a block of two semi-detached houses, one of which was destined for his own occupation, and he received a subsidy in respect of the two houses of £120. He subsequently occupied one of the houses and sold the other, and later still, he sold the house that he was then occupying, and bought a further site and erected thereon a bungalow for his own occupation. These sales occurred during the finance year 1928/29, and the inspector of taxes proposes to raise an assessment upon him for profit on sale of houses £175. He arrives at this figure by taking in on the receipt side the subsidy of £120. Apart from subsidy the actual profit on the two houses was only £55. In arriving at the income tax computation is the inspector of taxes entitled to bring into account the subsidy which was a free gift towards the reduction of capital cost to the building owner to stimulate the building of houses ?

A. Yes. The Exchequer subsidy forms part of the assessable profit.

Estate Duty Agreed Value.

Q. 2317. A died in August, 1930, leaving substantial property, including a freehold house in which he lived. This was valued at £950 for probate purposes, and the valuers agreed this figure with the district valuer. In July, 1931, this was sold for £1,450, and in August, 1931, the estate duty account was lodged for assessment of estate duty on the real estate, showing the value of the house at £950. Estate duty has been assessed on this figure. It is understood that in cases where the district valuer has agreed a value, and a sale at a higher figure is obtained after estate duty is paid, the Inland Revenue are bound by the agreed value. Are they so bound in the above case where duty is paid after the sale, which has not been disclosed ?

A. The Inland Revenue Commissioners are not concluded by the opinion of the district valuer, who merely acts as their adviser. Unless a certificate of discharge has been given, the Commissioners can claim additional duty, where "for any reason" it appears that too little duty has been paid: Finance Act, 1894, s. 8 (7). See also Customs and Inland Revenue Act, 1881, s. 32, which is apparently applicable to estate duty on realty by virtue of s. 8 (1) of the Finance Act, 1894. It is open to the executors to show, if they can, that £950 was the true value at the date of death, notwithstanding the higher price obtained nine months later.

Obituary.

Judge W. H. H. Thorne.

Judge William Hobart Houghton Thorne, who had been Judge of the Mixed Tribunal, Alexandria, Egypt, since 1919, died suddenly at the age of fifty-seven. He was educated at St. Paul's School, King's College, Cambridge, and the University of Paris, and was called to the Bar by the Inner Temple in 1900. From 1908 to 1910 he was British Commissioner on the Casablanca Claims Commission, and employed in the Foreign Office during 1910–11 in the preparation of Anglo-American Pecuniary Claims. President of the District Court of Larnaca, Cyprus, from 1911 to 1916; he acted as British Commissioner on the Athens Mixed Indemnities Commission from 1917 to 1919. Judge Thorne was an exceptionally good linguist and a brilliant conversationalist, and will long be remembered by all who knew him for his friendship and loyalty.

Societies.

Solicitors' Benevolent Association.

This Association held its annual general meeting at the Leas Cliff Hall, Folkestone, on the morning of Wednesday, the 7th October.

Mr. E. F. Dent took the chair, and after the Secretary read the notice convening the meeting, and the minutes of the last general meeting, moved that the report for the past year be received and adopted, and that the report and balance sheet be taken as read. This was agreed to unanimously.

The Chairman then laid stress on the necessity for an increase in subscriptions, in view of the heavy number of claims which came before them from time to time. Last year the total number of grants made were 318, of which 276 were out of the general fund, included in the sum of £11,822 (on page 2). The balance of forty-two came out of the annuities on that page, and out of the general trust on p. 4. Of those grants ninety-two were made to members and 225 to non-members, and in the case of members they amounted to £5,585, and to non-members £8,452. They were very anxious to see the grants to both members and non-members increased, but at the present time that was unfortunately impossible.

With regard to the expenses, the question had arisen whether it would be possible for the Association to economise in any way. Frankly, he did not think so, as the office work increased year by year.

Mr. A. E. Urmston (Maidstone) in a moving appeal, boasted of the position of his town as the "banner city" of support to the Association, and offered a "banner" to another city who could win it next year. He offered to visit any provincial town and speak on behalf of the Association, which had so many claims on the members of the profession. (Hear, hear.)

Mr. W. C. Tyrell said that a suggestion made recently was that one solicitor in each town should call upon his brethren and do his utmost to entice them to join the Society. As an instance of how practical a proposition this was, he mentioned the name of the hotel at which he was staying, and that there were three other solicitors staying there. He was pleased to say that that morning he was able to rope all three in as members of the Association. (Applause.) He had friends at the other hotels, and he would challenge them to equal that record. Other useful suggestions were made, and the Chairman promised that all suggestions put forward at that meeting should receive the most careful consideration of the Directors.

The meeting closed with a hearty vote of thanks to the Chairman, Mr. E. F. Dent, for his conduct in presiding over the meeting, proposed by Sir Reginald Poole and seconded by Mr. A. G. Spencer (Hereford), and carried unanimously.

THE LAW SOCIETY AT FOLKESTONE.

ANNUAL PROVINCIAL MEETING.

[By our Special Representative.]

The Forty-seventh Provincial Meeting of The Law Society, held at Folkestone from the 5th to the 8th October, was attended by the following members of the Council: Mr. Reginald Armstrong (Leeds), Mr. E. E. Bird (London), Mr. T. H. Bischoff (London), Mr. H. R. Blaker (Henley-on-Thames), Mr. G. D. Colclough (London), Dr. A. H. Coley (Birmingham), Mr. G. A. Collins (London), Sir Robert Dibdin (London), Mr. B. H. Drake (London), Mr. Richard Farmer (Chester), Mr. H. M. Foster (Aldershot), Mr. D. T. Garrett (London), Mr. W. W. Gibson (Newcastle-on-Tyne), Mr. W. A. Gillett (London), Sir Roger Gregory (London), Mr. R. F. W. Holme (London), Mr. L. S. Holmes (Liverpool), Mr. A. M. Ingledew (Cardiff), Dr. Chas. Mackintosh (London), Mr. W. E. M. Mainprice (Manchester), Lieut.-Col. S. T. Maynard (Brighton), Sir Chas. Morton (Liverpool), Sir Reginald Lane Poole (London), Mr. H. H. Scott (Gloucester), Mr. H. N. Smart (London), Colonel W. M. Smith (Sheffield) and Sir Robert Mills Welsford (London).

Reception at Leas Cliff Hall.

On Monday evening at 9 p.m. the Mayor, Councillor John Stainer, received the President (Mr. Philip Martineau), Council and Members of the Society with their ladies at the Leas Cliff Hall, the magnificent building in which the Society transacted the business side of the meeting. Built in the cliff, it is surrounded on three sides by covered verandahs which look straight out over the sea. It would be difficult to select more beautiful surroundings for the reception and dance which followed.

Civic Welcome.

On Tuesday at 10.30 a.m. the Society met in the Leas Cliff Hall and were formally welcomed to Folkestone by His Worship the Mayor and the President of the Kent Law Society, Mr. W. Rutley Mowll, who is also Registrar of the Dover Harbour Board.

Mr. Stainer, in his address of welcome, congratulated those present on the delightful weather which they had brought with them. He supposed the profession of the law was governed by the mean between theory and practice—between the ideal and the real. He had walked through Lincoln's Inn some weeks ago, admired its stately trees and noble buildings and inhaled its atmosphere of calm, thereby gaining some impression of the dignity and responsibility of their great profession. Those who worked in the office of a practising solicitor, looking through their windows—obscured, he was afraid, by the dust of years—must catch a proud vision of the glory of the view and gain inspiration from it. Their surroundings tended to help them to keep the highest and noblest in mind so that they might, as men, pay some of their debt to the past. The law should smooth the path of life and make the transactions of the business world easy and just, and The Law Society meet annually to foster this splendid ideal. He invited the members and their ladies to admire the beauties of Folkestone, the combined product of nature and an enterprising and united municipality. Heaven help the man, he said, who felt no emotion on beholding it. (Applause.)

Mr. Rutley Mowll recalled the last occasion, thirty-two years ago, when the Kent Law Society received and entertained the Incorporated Law Society—its title at that time. It then selected a young Dover solicitor to act as hon. local solicitor. He had been the young solicitor, and he was extremely grateful for the present action of this Society in taking him out of the rota to preside at that meeting.

The President of The Law Society then warmly thanked the Mayor and Mr. Mowll on the Society's behalf for their warm welcome to Folkestone.

Presidential Address.

Mr. Philip H. Martineau, the President, then delivered his address, as follows:—

The Law Society has never before paid a visit to Folkestone, and I desire first of all to express to the Kent Law Society our thanks for their kind invitation to their beautiful town and the cordial reception which they and the Mayor and other authorities are giving us.

Since the last Provincial Meeting at Bournemouth in 1929 I regret to say that death or resignation has deprived us of several greatly esteemed colleagues—Sir Charles Longmore, Mr. Thomas Eggar, Sir William Bull and Mr. Musgrave Francis have all passed away. Sir Charles Longmore held the office of President in 1913-14, and had been an extraordinary member of the Council for eighteen years, and Mr. Thomas Eggar held the office of President in 1915-16, and had been an extraordinary member of the Council for eighteen years. By the recent death of Sir William Bull, a member of the Council for eleven years, we have lost a colleague whose experience and knowledge were unique in many ways. He had been a Member of Parliament for over twenty years, and his parliamentary experience, which was great, was always at the service of the Council. His was a lovable character, and he will be greatly missed by all of us. Mr. Musgrave Francis, who had been eleven years a member of the Council, resigned his membership in 1929, much to the regret of all who knew him. He was a delightful man and a valued colleague, whose advice was always sound and at our service. He not only had a considerable practice at Cambridge, but took an active part in the work of both the county and the Borough of Cambridge. A man of extensive reading, and with a considerable knowledge of art, he was above all a gentleman in the true sense of the word; a mean thought or a mean action would have been impossible in a character of this kind, and it is the example of such men that is of such inestimable value to us.

It may be asked why the Council holds Provincial Meetings. The great value to my mind of these Provincial Meetings to the profession is that they provide an opportunity for solicitors from all over England to meet in conference annually. It enables those of us who practise in different parts of the country to get to know each other, and this is half the battle in any business or profession. One of the disadvantages under which we labour is that the great majority of solicitors are widely scattered, and are rarely, if ever, able to meet, though they have perhaps corresponded for years. Members of the Bar have the advantage over us in that most of them are congregated in the Inns of Court in London within a stone's throw of each other. These yearly gatherings therefore provide a unique opportunity for a free exchange of views upon matters in general, as well as upon those of professional interest, an opportunity of which we ought to take the fullest advantage in these difficult times, when there is a general feeling of unrest, and radical changes are taking place in every sphere of life, including the law.

I have sometimes heard it asked what is the good of the Council of The Law Society, and what does it do for the profession in general? Nobody welcomes criticism more than the Council, but I think any reasonably minded man has only to look at the annual report of the Council of The Law Society to see for himself the enormous amount of work done by it, and the endless number of subjects with which it has to deal. We cannot perhaps satisfy everybody, but I feel confident that those who have read the report will not utter any such complaint.

The two committees which perhaps come more in touch with the profession than any of the others are the Professional Purposes Committee and The Scale Committee. The Professional Purposes Committee sits every Monday throughout the term with emergency meetings in the vacation. It is a large committee, and the time given to the work is rarely less than one and a half hours, and often more, in order that the work, which is growing in volume every year, may be kept up to date. The work that devolves on the Chairman of this Committee is very heavy, and entails many hours of preparation so that he may be in a position to explain to the committee the circumstances and facts of each case; otherwise it would be impossible to get through the work in a reasonable time and keep it up to date.

The Scale Committee, which sits once a fortnight, also deals with a very large number of matters affecting the profession, and is under the able chairmanship of Mr. Dowson, a country member who is the permanent chairman. Every question that goes before the committee, no matter how small, is given most careful consideration and many acknowledgments of appreciation are received for the help given to members of

the profession. I think, and this is an important point, that it would be to the advantage of the profession if the decisions of this Committee were more widely circulated. At all events, it would show members of the profession the amount of work that is done by the committee which I think few of them realise. It is really a misnomer now to call it "The Scale Committee" and a better name might be found. I wish, however, to record the thanks of the Council to these two committees for the time and trouble which they give to their work, and the invaluable help they afford the profession.

The present membership of the Society is the highest in its history, being approximately two-thirds of the total number of practising solicitors, but I should like to see this number still further increased, and on behalf of the Council I venture to urge all members to persuade non-members to join the Society, for by this means it will be assisted and strengthened in its work of protecting and advancing the interests of the profession.

It is not possible, in an address of this kind, to deal with all the subjects which have come before the Council in the past year. I feel sure you would not wish me to do so, for there are other papers of interest which are going to be read, but there are several matters to which I think special reference should be made.

Cost of Litigation.

One matter which you will find referred to in the annual report is a question of great moment, becoming more urgent every day, namely, the cost of litigation. Complaints as to the high cost of litigation have occurred very frequently in the last few years. The London Chamber of Commerce, as the result of representations made to it by certain members of their body, appointed a committee to examine and report upon the subject, consisting of business men of high standing in the City of London, including a member of a well-known firm of solicitors in the city. They say in their report :—

> "Complaints of the high cost of litigation have been frequent in the past few years and seem to have come to a head recently. The settlement of civil disputes in a satisfactory manner is a necessary part of the economic life of all civilised communities. The procedure for the settlement of disputes can no more remain static than any other branch of the life of the community but must be adapted or altered from time to time to meet changing conditions. The great changes in economic conditions which have taken place in this country in the last twenty-one years, and especially since the war, have produced a criticism and examination on all sides of our economic institutions which our legal system cannot escape. The ordinary citizen has full confidence in the Bench. What he dislikes is the procedure and expense. The average citizen, especially if he is a business man, would be satisfied with a much simpler and cheaper procedure than at present exists in England,"

and the report goes on to make suggestions by which the practice and procedure might be improved and the expense of litigation lessened. This report, which was forwarded to the Lord Chancellor, is a remarkable document, showing, as it does, a grasp of the present needs of the business community and the care with which it has been prepared, and it should be read and studied by all lawyers.

You will have seen from the annual report of the Council that, on the invitation of the Lord Chancellor, my predecessor attended a deputation from the London Chamber of Commerce, which his Lordship received to discuss this subject. The Lord Chancellor then invited The Law Society to lay their views before him. The matter was dealt with promptly by the Council, and a memorandum was prepared embodying the Council's recommendations, and was sent to the Lord Chancellor within a very short time of his request that this should be done.

The Council, in their memorandum, deal with the matter under three general heads :—

(1) The witnesses' expenses and expense of presenting evidence.

(2) Counsel's fees.

(3) Solicitors' profit charges as distinguished from out-of-pocket expenses.

The Council very properly points out that none of the expenses incurred in obtaining evidence are strictly legal expenses, but the fact remains that they are all included in the solicitor's bill, because there is no other channel by which they can be brought before the judicial eye of the taxing master. The solicitor, however, is blamed for the heavy expenditure. These expenses are necessary to enable the case to be properly presented to the court in order for it to come to a right decision, and unfortunately in recent years there has been a tendency to overload cases, due perhaps to the requirements of counsel's opinion on evidence and to the solicitor's anxiety that nothing should be omitted that would possibly support his client's case. The Council thinks that the remedy is to some extent in the hands of the judges, and that they should be more ready to give definite directions to the taxing master to disallow costs of unnecessary evidence.

The Council favours a suggestion that has been made that there should be a preliminary hearing before the court, or before a judge, at which the points in issue can be defined and the points indicated upon which evidence will be required. It also considers that as soon as the pleadings are closed the summons for directions should be restored in order to obtain the judge's decision on the following points :—

(1) Discovery.
(2) Admissions.
(3) Affidavit evidence.
(4) Documentary evidence.
(5) Oral evidence, and in suitable cases the number of witnesses.
(6) Interrogatories.
(7) The desirability of assessors.
(8) Experiments to be agreed, if possible.
(9) Agreement of the correspondence.
(10) Date of trial.
(11) Jury.

The Council points out that this would, in effect, be a development of the existing summons for directions which, while a well-intentioned provision, has not been found of much use in practice, and is of opinion that the hearing should, if possible, be before the judge who will try the case, and should be in chambers. It would have to take place immediately after the pleadings are closed, and not, as now, before they are delivered, and before notice of trial. The judge might be able to extract from the one side or the other agreements or admissions that would greatly shorten the evidence. The Council considers that this hearing should be attended by junior counsel, or by solicitors only, unless the judge should specially certify for the costs of a leading counsel, and that it would be very desirable for a date to be fixed for the trial of every case, and such a date to be adhered to, but is aware of the difficulties which exist in this connection.

In dealing with the subject of counsel's fees it must be realised that a client is entitled to instruct any counsel he pleases, and that counsel are entitled to ask such fee as they may think proper. The experience of the Council of The Law Society is, that in nearly every instance it is the client who insists upon the employment of an expensive counsel, and not the solicitor. It can readily be imagined that in an action involving financial life or death nothing but the very best assistance from the very best counsel will satisfy the client, but that has to be paid for.

The Council thinks that, during the last few years, the amount of fees paid to counsel has risen out of all proportion to the rise in the cost of living, and that very often they are entirely out of all proportion to the issue involved, and that the refresher fees demanded by counsel are too high.

Another cause of great additional expense is to be found in the two-thirds rule, as a rule or a hard-and-fast convention that a junior must receive a fee which is two-thirds of that which is marked on his leader's brief, and the Council has come to the conclusion that it should be no longer maintained, but that any marked discrepancy between the brief fees of leading and junior counsel in this event might be adjusted in favour of the junior counsel by increasing his fees in regard to interlocutory work. The Council has also suggested that leading counsel should, in the case of large fees, allow a substantial part of them to be marked as a special fee, which would not be taken into consideration when a fee is marked on the junior's brief.

As to solicitors' profit costs, the Council has appended to their memorandum a specimen table of costs taken at random from actual party-and-party taxed costs. This is very instructive, for it shows that in a number of representative cases the solicitors' profit charges are but a small percentage (some 25 per cent.) of the whole of the costs of the action, and that when the solicitors' overhead charges are taken into account, the remainder is by no means excessive.

The subject of solicitors' charges has been very fully and fairly dealt with in the memorandum of the London Chamber of Commerce, and that Committee came to the conclusion that the net earnings of the average solicitor are not excessive. I thoroughly agree with this for, in comparison with other professions, solicitors are badly paid, and the method they have to adopt of making out their charges is undignified, and is, as a former President of the Council once said, "a relic of barbarism."

The Manchester Law Society have also issued a Report upon the expense of litigation which, while substantially agreeing with the suggestions in the memorandum of the

Council of The Law Society, goes further, and makes many other valuable suggestions. It is a comprehensive Report, and shows that much thought, time and care has been given to the subject. I hope that these three reports will receive the careful consideration which they deserve, and that some useful measures will be the outcome.

Mr. Claud Mullins, who has recently been appointed a police magistrate, in an interesting book which he has written recently, called "In Quest of Justice," to which I am much indebted, and which should be read by every lawyer who takes an interest in the question of law reform, says: "The present methods of administering justice are such that, whatever be the result of litigation, few participants can be wholeheartedly satisfied with it. The risks are so great, the cost is so high, the suit is so prolonged and the results sometimes so uncertain that in these hard times a large proportion of those who need the decision of the King's Judges will almost adopt any expedient rather than submit their troubles to the court."

In this book Mr. Mullins traces the history and evolution of our jurisprudence from very early times, gives interesting cases showing where it works hardly for the litigant, and suggests many useful remedies by which our practice and procedure could be simplified with advantage to the litigant, and benefit to the legal profession.

Before considering the remedies that might be adopted, it is well to bear in mind that the far greater portion of our law consists of a mass of cases which are treated as binding precedents, and which are known as "judge-made law." For generations our judges have been propounding legal principles, and making rules to meet changing conditions. This in practice has worked well, for fortunately we have had great judges in the past, and to-day we have the finest body of judges in the world, and they are assisted by a Bar, and solicitors, whose high sense of duty and honour cannot be excelled anywhere. The public have undoubted confidence in our judges, which is not always the case in some other countries, and the legal principles which they have laid down, and the decisions they have given, have on the whole been acceptable and suited to the English character and needs. The public know that if there is no law to guide the judges in any particular case affecting them, the judges will, if possible, find or lay down some principle to meet the circumstances, and that justice will be done, but, as Mr. Mullins so clearly brings out in his book, this evolving or laying down of legal principles has always been at the expense of one of the litigants who may have won his case in a court of first instance, and ultimately lost it in the House of Lords.

This "Judge-made law" is contained in a vast number of cases, growing in volume annually, which are treated as binding precedents. You know very well in practice the difficulty of finding your way through a mass of decisions in the Law Reports and the long hours that it takes, and very often at the end of your search, the finding of but conflicting decisions on the point of law for which you are looking.

Some of our great lawyers in the past have been in favour of a complete codification of our written and unwritten law. The codification of certain portions of our law has already been effected. Such as is contained in the Bills of Exchange Act, 1882, the Partnership Act, 1890, the Sale of Goods Act, 1893, the Merchant Shipping Act, 1894, The Marine Insurance Act, 1906, the Perjury Act, 1911, the Forgery Act, 1913, and the Larceny Act, 1916, and others, and the more we have of this class of codification the better.

As early as the eighteenth century Jeremy Bentham, with other law reformers since his time, have advocated an all-comprehensive code of written and unwritten law, like the code Napoleon, or the recent German Code. Bentham wanted a code which everybody could understand, and he denounced the lawyers of the day in no measured language for their opposition to his scheme, as desiring to profit by the confusion and chaos which existed at that time. Bentham however had set the ball rolling and since his day great reforms have been carried through by the codification of certain portions of both our unwritten and our statute law and procedure.

The question is, should we gain if another attempt were now made to give this country a code such as Bentham desired? Would this cheapen litigation and is such a course practicable?

At the time that the great Napoleon ordered his jurists to make a code, France was a country of departments, with different laws for each department, and consequently the condition of chaos which resulted was terrible. Undoubtedly the code Napoleon has been an immense benefit to the French nation, and to those countries that have since adopted her jurisprudence. The same may be said to a certain extent of the German code. Before the Franco-German War of 1870 Germany consisted of a number of separate principalities, each with their own laws. After 1870 Germany became a united empire, and the attempt at codification was begun, I believe, about 1874. It took the best part of thirty years to complete it, and pass it into law.

While an all-comprehensive code would undoubtedly reduce the expense of litigation, and simplify the work of our lawyers, the danger, to my mind is, that as time goes on it would be found too rigid. It would destroy that elasticity which has been a feature of our law essential to enable our judges to meet altered conditions and circumstances, and which has been so admirably applied by them in our jurisprudence for generations.

It does not follow at all that the system which has prevailed in France for more than a century, and which has been in use in Germany for over thirty years, would be the best for the English people. The conditions which existed in France and Germany, when these codes were planned and adopted, were quite different from anything which ever existed here, and I am told that in France the practice of citing decided cases is gradually creeping in, and the judges permit it, because their code has been found inapplicable to the ever-changing conditions in that country, and does not meet the present needs of the French people.

To codify all our written and unwritten laws would be a stupendous task and would take years to complete. The enormous number of decided cases in our law reports would have to be carefully examined and considered, and obsolete cases would have to be eliminated. Parliament would never attempt it, nor could Parliament do it if it tried, being far too much occupied with political questions to give the necessary time for the purpose. Only the best legal brains in the country could achieve this, as, if done at all, it must be done with that skill and care which can only be found in the legal profession itself.

For these, and other reasons, which could be adduced, I think we in England are better off without a rigid "all-comprehensive code" and that we should confine our efforts to codifying particular branches of the law, and to consolidating existing statutes when the time seems ripe for doing so. To enable this to be done, I would suggest that there should be, if such a course is possible, a permanent committee of judges, barristers and one or two members of the Council of The Law Society (on the lines of, or perhaps an enlargement of, the existing Rules Committee) set up by the Lord Chancellor. The duty of such a committee should be to meet at fixed times to examine and consider these questions, and to report to the Lord Chancellor, when it thinks the time is ripe for codifying and consolidating some particular branch of our law, and by this means Bentham's ideal might ultimately be achieved.

Our branch of the profession should be represented on any such committee, for the experience of solicitors in all matters connected with litigation and legislation is very great. They are more directly in touch with the public, and have a wide knowledge of the practical side of business matters. The judges and the Bar would bring a different kind of experience to bear, and the combination of all three would make certain that every point of view would be available on the questions which the committee would have to consider, and in my judgment the best results would be obtained in this way.

It has also been suggested that fusion of the two branches of the profession would substantially reduce the expense of litigation. From time to time in recent years this question has come up for consideration, and has always been ruled out. There are disadvantages, I admit, but there is much to be said in its favour. The Chamber of Commerce is definitely in favour of fusion. It recognises, however, that fusion is not practical politics at the moment. The late Sir Edward Clarke, who had had a wide and varied experience at the Bar, was a consistent advocate of fusion. I firmly believe that this reform must come, but before it is possible there must be a change of heart on both sides and much careful thought given to this subject.

There is also the question of whether more than one appeal should be allowed from a decision of a court of first instance. I am quite certain that the business man would be satisfied with one appeal only, whether it went against him or not. What he wants is economy, not only in money but in time, and this is why so many business men prefer to settle their disputes out of court. Justice should be rapid, certain and inexpensive, but this is certainly not the case to-day. The business man, and this applies equally to all other litigants, does not want to find himself involved in numerous appeals from which there may be no escape, simply because some principle of law arises which has never been settled before. If he is neither a very rich man nor a very poor one, he may find himself crippled or even ruined before his case is ultimately settled, not to speak of the mental anxiety and loss of time incurred. Care would have to be taken that this

did not interfere with the work of the Judicial Committee of the Privy Council as the final court of appeal of the Empire.

I also have a strong feeling that it would be only fair and just that when some important legal principle is involved which has never been settled before, and which is going to settle the law for future generations, some process or way should be found by which such points could be argued and decided without the expense falling on the unfortunate litigant.

The House of Lords can, and did in former times, occasionally call upon the judges to advise on obscure legal principles, but the judges objected to advise them on abstract principles when none of the facts of a particular case were before them, and this practice has fallen in abeyance.

Mr. Claud Mullins, in his book, makes some valuable suggestions on this point. He says: "The House of Lords could be entrusted with the duty of declaring doubtful points of law which would otherwise be likely to involve future litigants in expensive and dilatory litigation and appeals. Constant consultation with judges would, of course, be essential here. Thus, when new points arose, the judges would in the ordinary way declare the law as between the parties immediately concerned in litigation, and at once—perhaps on the invitation of the judges themselves—the House of Lords would provide authentic statements propounding the general law, statements which would be 'obiter dicta' if made by the judges in individual cases. These statements of the law, like those which embodied the precedents made by the judges, would, when the law had been codified, be embodied in the next issue of the code. This function would be one of the most valuable services that the House of Lords would render to the public. The performing of this work would put an end to the hardship that arises when individual cases are found to involve points of law that have not hitherto been decided: it would remove one of the principal terrors of the litigant, and thus throw open the courts to everyone who needs judicial decision." These suggestions of Mr. Mullins, as can be seen from a perusal of his book, depend upon the acceptance of the principle that the existing House of Lords and the Court of Appeal should be consolidated, and that in this way first-class talent would be free for the new work and without expense to the country.

I am inclined to think much could be done to simplify and cheapen litigation if the jurisdiction of the county court were enlarged. At the present time, as you know, a county court cannot deal with money claims over £100, nor can actions for libel, slander, divorce, breach of promise or seduction be tried in the county court unless the parties agree or the case is remitted by the High Court. It cannot be suggested that the present county court judges are incapable of trying such matters, as they are proved and capable lawyers. It is within my own knowledge that a relative of mine, who was a county court judge, tried many cases by consent, which involved large figures, and which in the ordinary course would have been commenced in the High Court, simply because the parties had confidence in his ability and judgment and desired to save the expense and delay of the High Court action. This must be the case in many of the county courts at the present day.

If the right of any party aggrieved to apply to the Court of Appeal to have the case removed to the High Court was reserved, why should not the county court be given jurisdiction in all cases when the claim is one for unliquidated damages up to any amount, the limit of £100 being only retained in the cases of liquidated claims so as not to interfere with that excellent procedure in the High Court under Ord. XIV? In this way much time and expense would be saved.

The salary given to a county court judge should be fixed at a figure which will make it certain that there will be no dearth of good lawyers who will be willing to accept a county court judgeship.

To meet, however, the pressing needs of the moment, the legal profession should address itself at once to the simplification of our present practice and procedure, leaving such matters as codification and fusion, and the enlargement of the jurisdiction of the county courts to be dealt with later if thought desirable. The suggestions contained in the memorandum of the Council of The Law Society, and that of the Manchester Law Society, should be given full and careful consideration.

There should be a preliminary hearing, in the place of the present summons for directions, to settle the points set out in the report of the Council of The Law Society. The taking of evidence in nearly all cases should be by affidavit, unless the judge directs otherwise, and there should be a right to cross-examine the deponents with the leave of the judge. The number of witnesses who should be asked to give evidence should be settled at the preliminary hearing. Expert evidence should be limited to two witnesses on each side unless the judge otherwise orders. A date should be fixed for the trial and adhered to, and the most important reform of all, one appeal only should be possible.

If these measures, or something on these lines, were adopted, a great initial step forward will have been made. The business man will be brought back to the courts, and no one will be deprived of access to the courts on account of the expense and delay.

It is my great desire and hope that during my term of office something may be done on these lines to restore the confidence of the public, and to simplify and cheapen our practice and procedure, and it is highly desirable that the initiative in these reforms should come from the legal profession itself, and not be forced upon it by Parliament, possibly in the form of some hurried and ill-considered measure.

We should bear in mind after all we are the servants of the public. Their interests should come first, and I am convinced that if we show the public that we have their interests at heart, and are doing all we can to meet their needs, the legal profession will not lose by it in the end.

Since writing this, I see that the agitation is already beginning to bear fruit. Mr. Justice Roche, speaking on the subject in the Commercial Court, has intimated, on behalf of the judges who have charge of that court, that if they are asked on a summons for directions by both parties to decide matters mainly, or in proper cases even exclusively, on documentary or other evidence which would not, apart from the consent of the parties, be available or admissible as evidence, they (the judges) are not unwilling to comply with such requests, but he goes on to say that the judges have no power to enforce on the parties such a mode of trial or so to act without their consent. Order 37, r. 7, of the Supreme Court Rules was intended to give the judges this power, but the full effect of the rule seems to have been rendered nugatory by judicial decisions. The report of the Bar Council has also been published, from which it would appear it recommends that the suggestions made by the Council of The Law Society of a preliminary hearing should be given a trial, and that it is prepared to agree to a modification of the two-thirds rule as regards barristers' fees.

Legislation by Reference to Rules and Orders.

The danger of modern legislation is, in my view, that Parliament is ceasing to exercise the care and supervision it gave to these matters in the early years of my professional life. The difficulty now is to know what the law is on some needed point, or worse still, where to put one's hand on it. When you think you have found the point you want, you are referred to some previous statute, and from that statute probably to some earlier statute, till one has but a vague idea of what has been retained of the old statutes and what has been repealed. If then, it is difficult for a trained lawyer to find the point he requires, without going through a number of statutes, what about the unfortunate layman who is supposed to know the law and possibly may incur severe penalties if he does not? The Income Tax Acts and Finance Acts are typical instances of the worst form of legislation by reference.

The truth is that the work of Parliament has become so vast and so complicated, that it has not the time as it had formerly to give the necessary care and attention to the proper drafting and arrangement of Acts of Parliament. Another outcome of this, and far the more dangerous, is the growing system of legislation by rules and orders. Apparently Parliament thinks it quite sufficient in these days to indicate the general lines of an Act of Parliament, and leave the permanent officials in Whitehall to fill in the blanks by what is known as Rules and Orders.

This is a danger to which the public are not yet sufficiently alive. If Parliament maintained a proper control over these rules and orders, but little harm might be done. It is doubtful, however, whether it does maintain such control. It is true that there are certain safeguards, under the Rules Publication Act, 1891, one of which is, that a rule or order shall not under any statute become law until it has lain on the table of the House of Commons for a fixed period, but in these days rules and orders are so numerous that it is a question whether such scrutiny (if any) is given to them, and in most cases they automatically become law without any notice being taken of them. If an order is certified as urgent, scrutiny may be dispensed with altogether under the Rules Publication Act, but more serious still is the clause which is being adopted, that a Ministerial Order under the Act shall have effect "as if enacted by this Act." This simply means giving a free hand to Ministers to do what they like.

That such a state of affairs should be possible is wrong in principle, and I trust that the legal profession, in the interests of the public, as well as of their own clients, will use and exert their utmost endeavour, in and out of Parliament,

to get this system of legislation abolished, or modified. It is only fair, however, to say that this very serious subject is under the consideration of an influential committee appointed by the Prime Minister and the Lord Chancellor, on which three solicitors, including my predecessor, are sitting, and, although I have no idea what their recommendations may be, I hope that they will be able to suggest some method by which the business of the country may be carried on and at the same time the rights of the public may be protected.

Poor Persons Procedure.

Another subject of supreme importance to the profession is the Poor Persons procedure, and though many of you no doubt have read the last report of the work done by the committees appointed by The Law Society, and the various provincial law societies, I feel that I cannot let the matter pass without some reference to it.

A very short time has elapsed since the Council of The Law Society decided to assume the responsibility for this work on behalf of the profession. I think you will all agree with me that the Council was justified in taking this forward step with all the responsibility which it entails. This procedure continues to progress satisfactorily, thanks to the loyal service of these Committees all over the country who give their services voluntarily, and to the solicitors and barristers who have undertaken the work without payment of fee or reward. I desire to express the thanks of the Council to all who have helped, throughout England and Wales, and particularly to Mr. Hassard Short, in making such an outstanding success of this procedure to help poor persons, in so phenomenally short a space of time.

The London Committee, numbering fifty-one members divided into nine sections, has held weekly meetings throughout the year, without interruption during the vacations. At each meeting the allotted work has been completed, and there are no arrears, while it has been found possible to allocate all cases and no complaints have been received of arrears. The greatest possible care and discrimination is exercised by these committees to avoid any abuse of the procedure, and only deserving cases are assisted.

It is also worthy of special mention, that we have received help from the Scottish Law Societies, and various Legal Aid Societies in the U.S.A., the Dominion Colonies and foreign countries, and that it has been possible to reciprocate this help in many instances. In addition to the work done under the rules, the committees and honorary secretaries are voluntarily and gratuitously giving advice and assistance to applicants, with regard to matters outside the immediate scope of the rules.

I think the profession may be justly proud of the work that has been accomplished. The poor man who can satisfy the committees that he is entitled to the benefit of the procedure, need have no fear that he will not be assisted in obtaining the justice which formerly he was unable to get through want of means.

Solicitors' Clerks Pension Fund.

The Solicitors' Clerks Pension Fund, which was inaugurated a little more than a year ago, has been successfully launched, and is now well on the way to become an essential factor in the organisation of the staffs of solicitors' offices. The Law Society not only took a benevolent interest in the inception of this scheme, but assisted it through its initial stages, and is now acting as trustee of the fund. There is a committee of management, representing both employers and clerks, who are responsible for the administration of the fund. The clerks naturally welcomed a scheme which so obviously enures for their benefit, and the response from employers also shows that the fund supplies a long-felt want. There are, however, many solicitors who have not yet taken steps to enrol the members of their staff as members of the fund. I venture to urge all such solicitors not to postpone taking a step which will not only secure pensions for their staff on equitable terms as between the employer and employee, but will relieve the employer from that moral obligation which most of us in fact recognise, on much easier terms than he can provide for himself.

I have not the time to specify even its more essential features, but I may point out that the fund, which has been very carefully adapted to the needs of our profession, is a voluntary one, the subscriptions to which are contributed in equal proportions by the solicitor and his clerk, that the income of the fund is free from income tax, and still more important that the annual contributions are allowed as a deduction from the assessment to income tax of the solicitor and of his clerk The chief credit for the initiation of this scheme is due to Mr. Bernard Harpur Drake, my colleague on the Council, and I desire to express to him the thanks of myself and the Society for the immense amount of time, skill and consideration which he has given to the subject.

Solicitors Bill.

I have not referred to the Solicitors Bill, as this, as you know, was talked out on the second reading in the House of Commons, but I hope the Bill will take its place in due course.

The Canadian and American Visit.

There is only one other subject to which I desire to refer, which is of great importance, and may have far-reaching effects. That is the return visit last autumn of members of the legal profession to Canada and the United States of America on the invitation of their Bar Associations. This is, I believe, the first occasion where a delegation representative of the whole profession has made such a visit, and it is therefore almost an historical event. It must have been an intensely interesting experience, especially for those who had never been there before. It is a matter of deep regret to me that I was unable to accompany the delegation, as I should have appreciated the opportunity of revisiting some of the places I knew so well. On the last occasion that I visited America I spent between two and three months there. The hospitality of Canadians and Americans is proverbial, and the welcome extended to me in those countries left an indelible picture on my mind. No one who has not visited these countries can realise the immense distances which one has to travel. To have crammed the programme into a visit of three weeks must have meant a very strenuous effort and hard travelling at a time of year when the temperature is usually such as we never experience in this country. While we look upon a journey to Scotland once a year as something of an undertaking, an American thinks nothing of travelling a thousand miles from Chicago to New York and back, during a week-end, to see a football match !

I desire to express the thanks, not only of the Council of The Law Society, but of the whole of our profession, to His Majesty's Judges, the Attorney-General, Sir Claud Schuster, Sir Roger Gregory, and to all other members of the legal profession who accompanied the delegation, and not least to Mr. Cook, our indefatigable Secretary, for all they did to make this visit such a success.

I am quite sure that such visits as these are of great value, for they create an atmosphere of goodwill, and an understanding of each other's points of view, and will surely result in strengthening the bonds which should exist between the great Anglo-Saxon nations. Such an understanding is of vast importance, not only to the country, but to the whole world at the present time. We speak the same language, we have the same ideals, and their jurisprudence is founded on ours. With this advantage, I can see no reason why any serious question should ever arise between us that cannot be settled by mutual goodwill and forbearance.

May this visit bear fruit a hundredfold.

Mr. Rutley Mowll moved the customary vote of thanks to the President for his address. While he did not agree that evidence could practicably be taken on affidavit in all classes of cases, he complimented the President on the broad view which he had displayed on so many important matters and on the ample food for thought he had given the conference. The address had, he said, brought home to the meeting that the honour and welfare of the profession was safe in the hands of their President.

Mr. L. S. Holmes (President of the Liverpool Law Society) seconded the vote of thanks, which was carried with acclamation.

Mr. Rutley Mowll then read the following paper :—

The Effect of Recent Legislation on the Coroner's Court.

Considering that there are some 32,000 inquests held in England and Wales every year, that frequently solicitors have to attend inquests upon matters of the utmost importance to their clients and that the interest in coroners' courts is evidenced by the wide publicity furnished by the press, it seems hardly necessary to apologise for asking attention to recent alterations in the law of coroners.

1. The Qualification of the Coroner.

The qualification of the coroner has been amended by s. 1 of the Coroners (Amendment) Act, 1926. Now a newly-appointed coroner, whether for a county or a borough, or a deputy or assistant deputy must be either :—

(*a*) A barrister, or

(*b*) A solicitor, or

(*c*) A legally qualified medical practitioner,

in each case of not less than five years' standing, and by the same section it is no longer possible for persons holding such offices as Mayor, Alderman or Councillor to be appointed coroner by their own authority on resigning such offices, as six months have to elapse from the holding of such office before such person is qualified to be appointed coroner.

2. The Tribunal.

Next the tribunal itself has been changed. Before the Great War the tribunal consisted of the coroner and a jury of at least twelve and not more than twenty-three good and lawful men. Now the jury is not less than seven or more than eleven, while the coroner, except in certain cases, is entitled to sit without any jury.

The cases in which a jury is still compulsory are :—

(1) Murder, manslaughter, infanticide.

(2) Deaths in prison or " in such places or in such circumstances as to require an inquest under any Act other than the Coroners Act, 1887."

(3) Deaths caused by an accident, poisoning or disease where there is a statutory obligation to give notice to a Government Department or Inspector.

(4) Deaths caused by an accident arising out of the use of a vehicle in a street or public highway.

(5) Deaths occurring in circumstances, the continuance or recurrence of which is prejudicial to the health or safety of any section of the public.

It must, however, be emphasised that although there must be a jury in these five classes of cases the coroner is entitled to the benefit of a jury in every case.

Another alteration with regard to the tribunal is the right conferred by s. 15 of the same Act to accept from the jury a majority verdict providing the minority does not exceed two. If the minority exceeds that figure the coroner can discharge the jury and summon a fresh one. It was formerly doubtful whether a coroner could discharge a jury without giving a verdict.

On the subject of the tribunal it may be mentioned that " the view " of the body has not been abolished. The coroner has to " view " *in every case* except in the rare case of a previous inquest having been commenced but not completed. The jury also, if he so directs or if the majority of the jury so desire.

3. Limitation of Coroner's Powers.

Section 20 of the Coroners (Amendment) Act has made an important alteration in cases where *some person has been charged* before examining justices with murder, manslaughter or infanticide. In such cases the coroner is required, in the absence of reason to the contrary, to adjourn the inquest until after the conclusion of the criminal proceedings, and if any person has been charged *on indictment* no inquisition, at a resumed inquest, can charge that person with an offence of which he could have been convicted on the indictment.

The main object of this section was stated to be to save the expense and time of witnesses being brought before two courts, the coroner's and the magistrates', in respect of the same offence. Another object was to prevent the accused person having to stand the ordeal of the investigation in the coroner's court as well as the police court.

It must be noticed, however, that if a person is charged before the magistrates and not committed for trial, the coroner can resume his inquiry, which he can also do if the grand jury throw out the bill. *In practice* the coroner's inquest frequently precedes the magisterial inquiry, and in such cases the person is not charged until after the coroner's jury have returned their verdict so that the section does not apply.

4. Extension of Coroner's Powers.

A very useful power was conferred upon coroners by this Act in enabling them to direct, act upon and pay for an autopsy without the necessity of conducting an inquest. Previously a coroner could only pay for an autopsy by holding an inquest.

The Coroner now has power to have a body removed into an adjoining area either :—

(*a*) To avoid duplication of inquiries on the same cause of death (ss. 16 and 17), or

(*b*) To have an autopsy made at a convenient mortuary in an adjoining area (s. 24).

On the subject of extended powers, the Infanticide Act of 1922 must be mentioned. This Act provides that where a woman by any wilful act or omission causes the death of her newly-born child, if at the time she had not fully recovered from the effect of giving birth to such child and by reason thereof the balance of her mind was then disturbed, she shall, notwithstanding that the circumstances were such that, but for this Act, the offence would have amounted to murder, be guilty of " infanticide."

Under this provision the death sentence is avoided in such cases where the Home Secretary always used to advise a reprieve. It is interesting as providing a case where the state of mind of the accused has to be considered by a coroner's jury, a subject which in cases of murder or manslaughter is not within their province.

The Children Act of 1908 also cast upon coroners a duty in respect of infants under the age of seven years who have been taken in for reward. The person receiving such child has, in case of the infant's death, to give notice to the coroner for the district within twenty-four hours after the death, and the coroner is bound to hold an inquest unless a doctor's certificate is produced certifying that he has personally attended the infant during its last illness and specifying the cause of death *and* the coroner is satisfied that there is no ground for holding the inquest. The registrars are not allowed to register such deaths until the coroner has given his decision regarding an inquest.

Regulations have been made under s. 9 of the Births and Deaths Registration Act, 1926, whereby any person intending to remove out of England the body of a deceased person has to give notice to the coroner within whose jurisdiction the body is lying and the coroner is then called upon to say whether he intends to hold an inquest.

The regulations also provide that the registrar must report to the coroner the death of any person who was not attended during his last illness by a duly registered medical practitioner or in respect of whose death he has been unable to obtain delivery of a duly completed medical certificate in the prescribed form.

The registrar has to report to the coroner every death where the certifying doctor has not seen the patient within fourteen days before death.

5. Rights of Audience in a Coroner's Court.

Various statutes have given right of audience in the coroner's court in addition to those enjoyed by the legal profession.

Thus, in fatal accidents in coal mines, metalliferous mines, quarries, factories and workshops, and in accidents caused by explosives or involving petroleum spirit, the coroner has, generally speaking, to adjourn the inquest for the presence of one of His Majesty's inspectors, who, subject to the powers of the coroner, examines any witness. These inspectors are trained men who advise the coroner on all technical points and are of the greatest value to his inquiry.

But there are also rights for others in such cases to attend and examine witnesses, viz. :—

(*a*) Relatives of the deceased.

(*b*) Persons appointed by his fellow-workmen.

(*c*) The owner, agent or manager of the mine, or the person having the occupation of the quarry or the occupation of the factory or workshop.

In cases of coal mines, those who are thus entitled to attend include persons appointed by the deceased's association of workmen and persons appointed by any association of employers of which the owner of the mine is a member.

Apart from these statutory rights of audience to lay persons, it is the practice of coroners (and encouraged by the Secretary of State) to allow trade union representatives to attend and ask questions in accidents in industrial occupations.

In each case the coroner has the duty of seeing that the questions are relevant and in no case are speeches allowed.

6. The Jurisdiction of the Coroner.

It is not always realised that the jurisdiction of the coroner depends not, as in crime, on the place where the offence (if any) has been committed, but on the place where the body lies.

Even this cardinal point has had some slight amendment as there is now power under s. 18 of the Act of 1926 for the coroner who has reason to believe that a death has occurred in or near the area within which he has jurisdiction in such circumstances that an inquest ought to be held, to apply to the Secretary of State for an inquest to be directed in any case where there is no body available owing to the destruction of the body by fire or otherwise or to the fact that the body is lying in a place from which it cannot be recovered. If the Secretary of State so directs, an inquest has to be held in such case despite the absence of any body.

7. The Practice of the Coroner's Court.

Although it is not strictly the result of recent legislation, it is perhaps permissible to refer to a circumstance which has been engaging the attention of (and some discussion amongst) coroners. It relates principally to what are called running-down cases—accidents caused by the driving of vehicles in highways. Until recently it was the practice of many coroners to advise their juries that unless the driver's conduct amounted to manslaughter the appropriate verdict to return was misadventure or accidental death. A case of this kind—*Rex* v. *Wood ; ex parte Anderson*—was heard on mandamus in the Divisional Court in October, 1927 (*The Times Law Report*, 13th October, 1927). There the jury had returned a verdict of misadventure but had added a rider censuring the driver. The Lord Chief Justice, in the course of the arguments, pointed out that this was a contradiction in terms, that misadventure meant a pure accident to which could be attached no degree of blame whatever ; it was, in effect, a complete exoneration of the driver. In consequence it is now

becoming customary to direct juries that, if they are not satisfied that there is sufficient evidence to justify a verdict of manslaughter and at the same time consider that there was some degree of negligence, it is competent for them to find that the deceased died by the negligent driving of C.D., but that such negligence did not amount to manslaughter. This intermediate verdict is adopted in appropriate cases. It has, of course, no bearing whatever on any civil rights of the parties, but it enables juries to find the verdict which they often intend.

In conclusion, may I say that coroners are sometimes subjected to a good deal of ill-informed criticism. The nature of their inquiry, especially in cases where a crime is suspected but no one has at the time been detected, is necessarily a roving one. It is their duty to endeavour to find out how and by what means the deceased came by his death, and no evidence that may elucidate that mystery can be excluded, but in examining the witnesses the coroner should be very careful not to question any witness in such a way that the witness incriminates himself—that is contrary to the administration of British justice—and if it is likely that a particular person will be charged, as the result of the inquest, care should be taken to confine the evidence to such matters as are admissible against that person.

It is my belief that the coroners' courts have an immense hold on the respect of our people. The knowledge that in this country every unnatural or violent death is publicly investigated in the coroner's court must act as a deterrent to crime and afford a satisfaction and protection to the general public.

Mr. Thomas Holtby (Driffield) pointed out the dangers of the coroner accompanying the jury to their room, illustrating his remarks with the story of the foreman who returned the verdict: "We thought he shot himself, but coroner, 'e says '*felo de se*,' so we finds e' died o' drowning."

Mr. S. F. Butcher (Bury) remarked that the paper showed the state of flux in which the law on coroners had been in the past and was likely to be in the future. The profession should interest itself in coroners' law; the part-time coroner would not survive long, and The Law Society should endeavour to protect the rights of solicitors to hold the position of full-time coroner. A very proper addendum to the office of coroner when held by a lawyer in country districts would be the position of stipendiary magistrate. A coroner of considerable experience was at least as well qualified to hold that position as a barrister of five years' standing.

Mr. F. C. Stigant (Rochester) criticised the passage in which Mr. Mowll had suggested that infanticide provided an instance in which a coroner's jury might consider the state of mind of the accused. He considered that the state of mind of a person accused of murder or manslaughter must be to some extent within the province of a jury in attempting to decide between the two verdicts. He had always understood, he continued, that a solicitor had no right of audience before a coroner, and that the coroner had complete discretion on whether he would allow audience.

Mr. W. W. Gibson (Newcastle-on-Tyne) complained that in some districts the coroner's jury seemed to be a sort of standing body, who could only be described as "a gang of beery-looking ruffians," whose sole anxiety seemed to be to get away as soon as possible to their favourite public-house before it closed. The remedy was entirely in the hands of the particular coroner concerned, and he hoped that the practice of calling the same persons repeatedly would be discontinued in the few places where it existed.

Mr. Holtby remarked that in the case of *Rex* v. *Devine; ex parte Walton*, into which he had enquired as coroner, it had been decided that the coroner's jury must not be a standing one, and that no member must be called a second time until all eligible persons had been called.

Mr. Mowll, in reply to a question by Sir Reginald Poole, said that he did not know to what extent the coroner's office existed outside the United Kingdom. The coroner's text-book referred to an Anglo-French coroner, an office of great antiquity. There was no coroner in Scotland. To Mr. Stigant he pointed out that a coroner's jury had no right to consider the state of mind of a person accused of homicide. He could not, he said, conceive of any coroner refusing audience to a solicitor. He regarded the coroner's court as a court of record in which every solicitor was entitled to represent his client, subject to the authority of the coroner. In reply to Mr. Gibson, he expressed complete satisfaction with the juries who helped him in his own inquests.

Mr. Harold Potter (Reader in English Law in the University of London, King's College) read the following paper:—

Theory and Practice in Legal Education.

A learned profession must regard the education of those who are about to enter it as its constant care. Its worst enemies, if indeed it has enemies, cannot lay blame upon The Law Society for want of care in this among its many activities, and not only the profession but the whole community owe a debt to those who have laboured in this cause. No apology need, therefore, be made for the appearance of this paper upon the agenda of this meeting, whatever may be required for its contents.

The subject of legal education has, however, many aspects, not all of them even strictly professional, and it is well to define the limits of this paper. It would be irrelevant, if not impertinent, to say anything of the legal education of those seeking to practise at the Bar. Of the wider field of those who study law at the Universities, whether in contemplation of some sphere of activity other than the practice of the law or in pursuit of the liberal education which law affords independently of any vocation, it is equally unnecessary to speak, although something will be later said of the value of such a course to those who intend to become solicitors. The object of this paper then is to discuss and to provoke discussion upon the subject of the education of the articled clerk, and more particularly that aspect of it which concerns the relation of theoretical knowledge and practical experience.

To form the basis of sound discussion it may be well to define the object upon which the issues are based. For what qualities should we professionally look in the newly admitted solicitor? It is upon these that the requirements of his education should be grounded. The writer may therefore be forgiven for a slight enumeration of what he regards as essentials, although it is upon this point that opinions will differ, and some will differ widely. Nevertheless, unless the aim of education is clearly defined and steadily maintained in view, its policy cannot be adequately settled or its results be finally satisfactory.

The young solicitor to-day enters a profession whose place and function in the community is undergoing a marked change. The development of certain vocations, where members indulge in legal or quasi-legal work, has been of recent years both rapid and marked. It is unnecessary to enumerate these vocations: it is sufficient to refer to accountants and estate agents as representing some of older standing. These vocations bring their members into touch with the business men of the community more readily, though not more closely, than does the solicitor's profession. The inevitable result is that the solicitor is tending more and more to become less a man of business and more purely a lawyer required to handle the more delicate legal aspect of affairs. At the same time the type of client with whom the solicitor has now to be prepared to deal has widely extended in range and variety. In saying this I am not suggesting that the law has become more the concern of all classes of citizens than it was, but merely that in fact all classes are to be found making their way to the offices of a lawyer more than was formerly the case. Reasons for this are numerous and it is unnecessary to state them here, but to avoid misunderstanding let me point to the vastly increased class of small property owners consequent in the breaking up of large estates. There are other features of change, such, for example, as the creation of new tribunals, e.g., The Traffic Commissioners, which will occur to the minds of those present, but these two are sufficient to emphasise the point I now wish to make.

The young solicitor of to-day, and I prophesy that it will be more so for his brother of to-morrow, must look forward to a career in which law, and a capacity to advise upon legal points, will become increasingly important, and in which quasi or non-legal work and probably also routine work will be diminished. The contraction of his sphere of operations will combine with his varied clientele to make him more purely a specialist in law than he has ever been. Although it is proverbially dangerous to prophesy I am prepared also to foretell that for economic and other reasons resort to counsels' opinion will be increasingly infrequent.

Although the young solicitor will be required to be a legal specialist in the sense that he will be more a lawyer and less a man of business, yet the variety of his clientele will prevent him from being in any sense a specialist within the law. Here I speak of the average young man who has just been admitted. The point here maintained is that the qualification for admission to the Rolls should be a capacity to deal with any legal matter that may arise in the course of practice. As I shall shortly show, this does not mean that he shall be able to answer any legal conundrum that may be propounded, but that his knowledge shall be sufficiently wide to know that the conundrum exists. No doubt there are many young men who know at the time of their admission that their normal career will lie in a certain field of law of a certain nature, such, for example, as maritime law. It is my contention, however, that the scheme of education should not be addressed to such cases as these. They are now much in the minority and the proportion will, it is believed, decrease.

It is the function of The Law Society, in the interests of the community which the profession serves, to ensure so far as is reasonably practicable that the newly-admitted solicitor is qualified to undertake the multifarious duties which fall to the lot of the solicitor in general practice. I am here speaking of the qualification required for admission, and not to any honours examination that the Society may see fit to add to the general test of fitness.

At the same time, a short acquaintance with practice will at once teach the most ardent theorist that mere knowledge of the law alone is not adequate to meet the calls of practice. A clerk cannot learn all the details of practice during his novitiate; indeed, he will almost certainly never learn them all. Nevertheless, sound general experience based upon understanding may well serve him in matters new to his own experience. The fact, therefore, that an articled clerk has devoted most of his apprenticeship to some specialist branch of law may be some handicap to his general training, but, if he has employed his time intelligently, it is no insuperable difficulty to acquiring a high standard of general efficiency. It will, therefore, be seen at once that the practical side of his training must be related to his legal knowledge as far as possible, but that in considering his qualification it is imperative to maintain the standard of the general practitioner rather than the specialist. This becomes yet more imperative if it is remembered that it is this training alone which may avoid mistakes based upon the failure of the specialist to perceive implications in a case of a general nature and not within his specialist experience.

Before leaving the qualification that should be the aim of the education which is under discussion, it is well to turn more particularly to the type of knowledge that is required. One of the commonest mistakes made by examiners and laymen is that a lawyer should be tested in the pure knowledge of legal details derived from text-books and acquired chiefly by feats of memory. Having little or no memory myself, I naturally have great respect for those enjoying that privilege and I envy them their capacity, but I do not think that this is what should primarily be expected of the aspirant for admission. He should have had a sufficiently wide general legal training to know where his law is to be found; he should have such a thorough grasp of principles that he should know what to expect and look for: finally, and most imperatively, he should be able to apply his legal principles whether he remembers them or looks them up. It is the last requirement that makes his practical training so essential to his theoretical education, apart from its intrinsic and essential value in carrying out his functions as a practitioner. It is the nice balance of practical experience with the capacity to apply theoretical principles of the law to any matter in hand which constitutes the problem.

It is convenient to say a word first upon the character of the practical experience which an articled clerk may receive. It must be admitted that in fact this varies a great deal both in method and in extent. It is my personal opinion that every articled clerk should, as far as possible, know from actual experience how everything is done in the office, from the work of the office boy upwards. In his future career this arduous routine work will give him confidence in handling office matters. It is, however, a question of time, and an experience which should include the actual handling of the accounting side of the business takes much time if it is to be of any real value. This sort of knowledge is of utility in practice in dealing with business clients, who are sometimes impatient of a solicitor's ignorance of this side of business transactions. The existence of this problem is one of the strongest arguments against any shortening of the five years' term of articles. The problem is rendered more difficult because any articled clerk who has tasted the comparative liberty of University life, and has acquired such intellectual distinction as may be conferred by a degree, is frequently less willing to submit to the drudgery and what he often regards as the dull routine of the life of an ordinary clerk who has not attained to responsible work.

Whether or not the discipline here suggested meets with your approval, there will be universal agreement that where matters are usually done by the solicitor himself, or a clerk of the status of a practical expert, it is essential that the articled clerk should not only know how these things are done, and see them done, but that he should actually do them himself.

When the enormous field of activity covered by a solicitor's practice is recollected, and the comparative infrequency with which he has to deal with many matters, and the period of time over which many of them will extend, it becomes apparent that both the length of articles and their constant call upon the time of the articled clerk cannot be easily exaggerated. Apart from the simplest forms of litigation any case must last many months, if not years, as is within the experience of all who have had suits in the Chancery Division. Yet it cannot be denied that merely to see isolated phases of litigation gives no adequate experience of its conduct as a whole. What has been said of litigation applies only less in degree to the winding up of a deceased's estate. All these matters point in the strongest possible fashion to the longest practicable period of articles. It may be added that much of the practice and experience in the conduct of these matters cannot be learned from books. The slightest acquaintance with books written either for student or practitioner on such topics emphasises this point. It may, however, be said in parenthesis that, since they cannot be learned adequately from books, they should not be emphasised as examination subjects or be the subject of detailed questions. Any attempt so to emphasise them leads to the cramming of knowledge, which is largely useless for those who have not had the advantage of meeting them in their practical experience. It should never be forgotten that the education of the articled clerk is not comprised within the four corners of his examination syllabus, and any attempt so to confine it is injurious.

This is a strong and urgent plea for emphasis on the purely practical side of any articled clerk's education, but it has been made particularly in the light of the modern tendency on all hands to stress the examination syllabus, and to put upon the student a heavy burden of work of a purely theoretical character. My position may acquit me of any lack of love for legal learning, and I am pressing now for a due adjustment and appreciation of the theoretical aspect of law for the student.

It must be remembered that, while the solicitor never ceases to learn the practical side of his work, the calls of a busy practice normally render it difficult for the practitioner to do more than keep himself in touch with modern developments, and leave him little leisure for the mastery of new subjects, save in those cases of exceptional attainment which are outside the scope of a paper which is addressed to the subject-matter of the average man. In consequence it is essential that the solicitor, who is to be a lawyer, should find time during his articles to acquire that knowledge of principles, which may provide him with the material for meeting his legal problems. For this purpose what he needs is not a knowledge of multifarious legal points and recent decisions, but a thorough and complete grasp of essential principles. It is at this point that theory and practice touch.

The contempt which is sometimes expressed for theory by the practitioner is due to certain causes which afford some ground for complaint. It is common knowledge that many young men with excellent examination records make indifferent practitioners. They appear to be wanting not only in experience but also in capacity to apply what they do know to the facts which come before them in the office. All this is admitted. The quarrel, however, does not really lie with a proper theoretical knowledge of law, but with examinations and the means taken to prepare for them. With this point I must deal at length later.

Another aspect of the matter is the sort of statement sometimes met with that after all a solicitor does not really need to know much law, but what he wants is practical experience and commonsense. There is of course a strong element of truth in this view. It is not a mere catch phrase to bolster up indifferent attainments. Practical experience is invaluable because no transaction is purely a question of law. Furthermore commonsense may often represent the best method of dealing with a problem, though it may have a legal aspect. Moreover the theoretical lawyer is apt to forget that the practitioner must make the law work, and his job is to get the transaction through, and by a method causing the least difficulty. If a legal question can be avoided so much the better. In this last point, however, the weakness of the statement as more than a partial truth appears. The profounder his real knowledge of law the less is the solicitor likely to be bothered by unessential questions, and the more readily will he be able to circumvent any problems that may arise. Many transctions suggested by clients have never been put through, or have been clumsily achieved, through ignorance of essential principles. I recollect an articled clerk, who was then in his last year and had had a rather brilliant career, telling me that he had been perusing a will drawn by his principal which contained nineteen offences against the Perpetuity Rule. I did not see the will, but I think it highly probable that the articled clerk and principal had both made mistakes. I have, however, heard of a number of cases in which a testator's intentions were not carried out because of a supposed offence against the Rule. When I add that I have seen counsel's opinion which confused the Rule against Perpetuities with the rule in *Whitby* v. *Mitchell*, it is apparent that the answer does not necessarily lie in resort to counsel. I mention these facts to emphasise that it is the combination of practical experience, common sense, and proper legal training, in which the theory of law must play an important part, which makes the good solicitor.

Let me come back, then, to this proper legal training. What it is, how it should be learnt, and when it is to be acquired.

It is a common fallacy that law is learnt from books much as the descriptive side of history is learned. The student sets out to assimilate the law as a set of facts. Statute has provided this, and decision has decided that. He learns the facts on which cases are decided, and the way the judges have answered the problem. That is how most text-books are written. He occasionally finds why the judge has held this or a statute has provided that, but the student generally seeks to acquire this information also as a fact. The text-book that is used is the one which makes the smallest demand upon his reasoning powers.

Baldly stated thus, there are few lawyers who will assert that the method is right, but honest experience will prove it true. Many times students and practitioners alike have remarked to me that they never seem to find a case on all fours with the point they have to deal with at the moment. Of course they don't. Exactly the same sets of circumstances only exist in those cases in which no question can arise. It is an elementary proposition of nature which would no doubt be supported at once by any scientist. Book learning of the type mentioned above cannot supply a certain answer, and, by a confusion of ideas, a theoretical knowledge of the law is discredited.

The real truth is that a sound theoretical knowledge of law is a science and not an art. It is not merely an acquisition of information, but an intellectual development based upon a certain class of data. What a student really requires to learn is not so much what is settled law, but how he should determine what legal points arise from varying sets of circumstances and how to apply the law that is settled or approach a problem that is unsettled.

It is at this point that the kind of knowledge and the method of acquiring it become perceptible. The kind of knowledge is to be found in the fundamental principles of the law and not in mere details, except in so far as they illustrate or explain principles. The method is intellectual reasoning that makes law a scientific understanding of the rules governing the transactions that make up daily life, whether in business or in the ordinary affairs of mankind. For example, it may be said that the reason why proportionately fewer questions arise out of the contract of personal carriage than of the contract of carriage of goods is due to the quality of the facts and not the intrinsic character of the transaction.

The close relationship between knowledge and method can be illustrated from the present difficulties surrounding the question of settled land. No student can be said to have grasped his subject without a thorough understanding of the confusing and perhaps conflicting principles which have gone to make up the interpretation of s. 1 of the Settled Land Act, and the effect of the application of that section to any interest in land by virtue of such sections as 2, 3, 17, 18, 36 and 110, which bind and loose the interest in a fashion all their own. These matters are entirely fundamental, and no conveyancer is safe unless he comprehends them so far as they can be understood and realises the pitfalls which they have produced. The many powers which the Settled Land Act has conferred, on the other hand, are details, not principles. They illustrate the way in which the Act is intended to operate, but so long as a practitioner knows they exist their content is relatively unimportant; he can readily look it up. So much for knowledge in this connexion, but method is here equally important, because, unless the student has been trained to grasp the significance of decisions and reason from them to undecided issues, he will be in some danger of accepting bad titles. It is the treatment of law as a scientific system upon which the student must exercise a developed intellect capable of close and incisive reasoning which alone will enable him so to grasp his subject as to be prepared for pitfalls. In many cases such as these, a title, for example, may appear to be perfectly simple and straightforward unless the practitioner appreciates that if it is accepted at its face value there must be some violation of a simple principle. Not long ago I was faced with a somewhat complicated set of facts in which the title would have been perfectly simple provided that a particular method of providing for the payment of a life annuity could be accepted as discharging it from the title. On the surface there was no reason why it should not, because there was no danger of the annuity not being paid, but in fact there was no *de jure* discharge of the rent-charge and hence there was settled land. I could mention other examples not connected with the 1925 legislation in which a title, on the surface perfectly straightforward, has proved incomplete when quite a familiar principle was applied to a link in the chain.

It is these principles, which underlie many branches of the law, that are frequently regarded as theoretical and not practical. My thesis is that they are of the first importance, because the initial difficulty is to see that there is a problem. In practice it may be that the problem will be sent to a specialist for solution, but failure to perceive its existence may produce disastrous results.

It is then in this field that the efforts of The Law Society to increase the standard of theoretical learning is being blessed with valuable fruits, and the increasing complexity of our law in many branches renders the effort ever more worth while.

While I have emphasised the necessity of sound theoretical education, it must be apparent that great stress has been laid not so much on the learning itself, but upon its practical application. Here, again, method becomes of the first importance. As long as the student learns merely the result of the application of the law to reported facts he is in danger of allowing memory to play the part assigned to reason. His education should proceed as far as possible upon the lines of applying the law, and experiencing the difficulties that it sometimes involves, in relation to facts that are not taken straight from reports. The best place where this can be done is in the solicitor's office. A lecturer, who has leisure and opportunity, can, of course, provide material for his class, and indeed this is essential in instruction to provide an orderly and systematic treatment of the subject based upon the principles already enunciated. Speaking as one who has taught many students, both of the class with and of the class without practical experience, I can say that it is very difficult for a student without practical experience to grasp the significance of facts so presented and the application of the law to them. Without practical experience it is extremely difficult even to realise the necessity of disentangling essential and unessential facts, or of grouping facts into the logical order required for the application of legal principles. It is for this cause more than any other that the man with high theoretical qualifications may prove a broken reed in the conduct of practice. It is not that his learning is necessarily useless, but that he cannot employ it profitably in his everyday work. As a result he not infrequently falls back upon rule of thumb methods which his education has been designed to avoid.

The logical result of the propositions put forward, therefore, is that for the articled clerk his theoretical training should coincide as far as possible with his practical experience. His practical experience must from the nature of things be only partial and unsystematic regarded as a whole. His theoretical training should cover the field that his professional activities may, though not necessarily must, follow. It is, therefore, desirable that his practical experience should be as prolonged as far as is reasonably possible in order that during the time of his theoretical studies he may have an opportunity of seeing in practice the working of those branches of the law of which he must understand scientifically the fundamental principles.

Leaving on one side for a moment the question of taking a degree at a university, where in practice it may be impossible to be under articles, it may be safely stated that, if the principles here enunciated are sound, the present tendency to shorten articles by providing alternative periods of purely theoretical instruction is unsound. It is better for the student to have rather more leisure in the later period of his articles to master theoretical principles whose application he has seen in practice than to be given before articles instruction much of which he will be unable at the time to appreciate or later to apply to facts which come into his practical experience.

It is equally unsound to leave much room for the specialist at this stage. The burden of theoretical study, if a mastery of the principles of all the branches of law which are familiar to the lawyer's office is demanded, is sufficiently great if combined with assiduous attention to practice to eliminate the prospect of specialist studies. To one whose career is so limited there is the period immediately succeeding admission and before the burden of responsibility falls too heavily. Furthermore, our law is now such a seamless web that it is almost unavoidable that every practice should be touched by it at innumerable points, and it is a peculiar danger for the specialist solicitor that he may overlook a point not normally within his sphere.

In a paper such as this, involving as it does very wide questions, it has been hard to prevent the semblance of a rambling discourse, but if the two points just made have clearly emerged and are accepted, they provide a basis for a sound method of instruction, a guiding principle in the relation of theory and practice, and an indication upon which a curriculum can be drawn up. It remains, therefore, to mention the subject of University degrees because these play an increasingly important part in our system of education.

Many parents consider that before starting a professional career it is desirable that their sons should take an ordinary course at a university, more usually at Oxford or Cambridge.

These students may or may not take a degree in law, and it is, of course, possible to take a course which is not exclusively legal. If the undergraduate proceeds to a degree otherwise than in law, the only observation in point here is that the period of three years under articles is really too short save for the most accomplished mind endowed with considerable capacity for work. Although it is undoubtedly helpful from a purely examination point of view to take the Intermediate and Final Examinations fairly close together, yet if the student is to take his theoretical studies with the seriousness which they deserve he must neglect the practical side of his training. This is dangerous, but to fail to adopt this course may be even more disastrous. Any articled clerk, therefore, who pursues this course, should be prepared to undertake systematic and intensive study for a period beyond articles, as, for example, by reading for a degree in law. Parents should remember that this is none too palatable a task for most young men when they have already left school for at least six years, and when they are not pressed by the necessity of professional requirements.

For those who proceed to a degree in law, in the first place, matters are very different. They will, if they have had reasonable application, enter upon articles with a wider knowledge of law than the articled clerk who has taken the Intermediate Examination, and should have a more profound grasp of principles in a number of subjects of the first practical importance. Their problem will be so to marshal their knowledge by constant revision and reconsideration to enable them to apply it in practice. If they will remember that, although their Final is three years ahead, they cannot neglect their theoretical studies because they have acquired them in a different atmosphere, then their increased intellectual development should enable them to make up much of the practical experience they have lost by their rapidity in comprehending what to them are new things. Much must depend, however, upon the manner and method in and by which they have learnt their law, and to this I have already devoted sufficient time.

One other aspect of this full-time course cannot be neglected. One great advantage that the University man has, is the breadth of his intellectual and social outlook. He has mixed with all sorts and conditions of students of many branches of learning. The practical value of this is manifest, and upon it I need not dwell. This leads me to one other remark. In certain law schools this intermingling with students in other faculties either does not exist or shows a tendency to be reduced to the lowest dimensions. In such law schools the whole-time student and study for a degree, which should be the hall mark of University training, are hardly in place. As I have said, a University training should represent something much more than the intellectual development leading up to a degree. I am the last to despise the intellectual training, but a law school which is purely a law school without other students belongs to the professional, and not the University, sphere.

It is not, however, necessary to be a full-time student to take a degree. Apart from graduates of Oxford and Cambridge, I should have thought that the majority of law degrees held by solicitors were taken when they were either under articles or after admission. The pecuniary value attaching to such a qualification is not within the object of this paper. There remain two other questions, how far is it possible, and how far is it desirable? The answer to the first question is simple. It is not only possible, but many of the most brilliant degrees, even in competition with full-time students, are taken by undergraduates serving their articles, and in circumstances where their articles are no sinecure. Let me pause to remark how strongly this fact bears out what I have already said about the relation of theory and practice and the desirability of having the latter while studying the former. What is more these students have by no means all of them held aloof from the general activities of the University in which they have been undergraduates. It is easily possible in the two Universities in which I have taught law, for an undergraduate, who is under articles, to take a share in the social life of the University. My experience at London University is too limited to say more than this, but of the University of Birmingham I can add that articled clerks have played a conspicuous part in undergraduate life. Naturally it is much easier to do this if articled to a sympathetic principal, but I hope that this paper may help towards sympathy on the part of any principal who reads it.

Naturally, for articled clerks living at a distance from a University centre it is more difficult, and in some cases impossible, to get this benefit, but the areas in which it is now open are very wide. Even for those not within such an area the external degree of London University provides an opportunity for the acquisition of the purely intellectual development of a University education.

It may, perhaps, be regarded as natural that I should favour wholeheartedly the scheme of reading for a degree. I must, therefore, provide reasons. I have mentioned that liberal side of education, which is not bounded by an undergraduate's studies, and which can be obtained to a greater or less degree, even in a non-residential University. This mention must suffice, for it speaks for itself, and is of itself a sufficient ground to support my plea.

The curriculum for a degree varies with the different Universities. They all have, however, this in common, that they require certain subjects which are of a less purely professional character than those forming part of the solicitors' examination. These subjects, generally referred to as academic, have an intellectual value of their own. A subject like jurisprudence develops the legal acumen and capacity to master broad principles in a manner absent from any more immediately practical subject, and on the other hand certain parts of constitutional law and history and public international law, for examples, provide data of wider and more general interest on topics not peculiarly legal yet approached from a juristic standpoint. Such studies give a breadth, and, in educational jargon, a cultural background which a purely professional training cannot afford. The value of this cannot be measured, and must vary greatly with the individual. Furthermore, however, a University is the place for the discussion of theoretical problems which, while of considerable value as a legal training, must usually be regarded as too abstruse or remote from practical affairs to be admitted readily as an essential feature of a professional curriculum.

One purely empirical consideration may be put forward. If an articled clerk will take a degree course in a University it will ensure that for the period of three years he will steadily pursue a course of study under proper supervision. This steady application, followed later by further reading for his professional final, will mean that virtually throughout the period of his articles the articled clerk will work steadily and with an object, almost essential to steadiness. The advantage thus accruing both to his theoretical knowledge and to his appreciation of its practical application can hardly be overestimated.

I suggest that for all these reasons every articled clerk should be encouraged to proceed to a degree and that solicitors will benefit the profession by suggesting to any intending articled clerk that before entering his articles he should obtain a matriculating qualification. In saying this, however, I appreciate that this is a counsel of perfection and that many considerations, such for example, as health, may render the additional burden of taking a degree an imposition beyond the capacity of some articled clerks.

Mr. G. A. C. PETTITT (Birmingham) said that, as a solicitor with an extensive general and commercial practice, he had found it of the very greatest value to know business matters, and that before the young solicitor could properly apply his theoretical knowledge he must use every opportunity of learning these matters.

Mr. POTTER replied that he had never meant to suggest anything to the contrary. He had taught articled clerks for many years that business men sometimes preferred to go to chartered accountants because these men understood business men and lawyers did not. Nowadays an emphasis was laid on law that had not been laid in earlier times.

Mr. H. WILLS CHANDLER (Basingstoke) read the following paper:—

DECREASE IN THE COST OF LITIGATION.

Since reading my first paper at the Provincial Meeting, 1928, the resentment of the public on this subject has become more vocal, and it is obvious that, if the procedure is not simplified from within, the history of other legal reforms will be repeated and the system will be mutilated from without by inexperienced hands. The London Chamber of Commerce issued a report on the subject. This has moved the Bar Council, The Law Society and the Manchester Law Society to make certain recommendations. Many of these are admirable, but unanimity has not always been secured and there is still an uneasy feeling that the surface only has been skimmed, and this too lightly.

The Chamber report against the extension of county court jurisdiction and the Bar agrees. Our Society is silent. Manchester would give the county court in larger towns special jurisdiction up to £500. May I again stress the suggestion that by far the most satisfactory method of settling this old controversy is to abolish the county court, to convert every county court into a district registry and to make the county court judges district judges of the High Court. The present simplicity of issuing a writ where one chooses and without leave would prevail. Leave to defend should be obligatory, but could be applied for wherever it was convenient to do so. No longer would it be necessary to prove an

undisputed claim. Fees and costs would be graduated with sharp differentiation between undefended and defended cases. The change should not affect the present privileges of the Bar or of the solicitor advocate, and it would be an economy and an act of justice to give the latter the same advocacy fee as the former. Rationalisation on these lines would bring to the humblest suitor the procedure of the High Court, which in so many respects is simpler and quicker than that of the county court.

The Chamber proposal for a sliding scale of costs dependent on the amount recovered is not favoured by our Society. It is endorsed by the Bar subject to its being applied to party and party costs only in the form of a maximum sum recoverable. This qualification is at variance with the well-grounded theory that party and party costs should (apart from extravagance) be a complete indemnity to the successful litigant. A maximum may also be very unfair when important issues arise in a case of trivial amount. However, that a litigant should know in advance the extent of his liability, whether he wins or loses, is such an attractive proposition that it deserves to be further explored.

The Chamber and Bar recommendations that all documents should prove themselves unless challenged has been received with acclamation. Sir Roger Gregory is not in favour of everything being accepted because somebody else says it is true, and properly observes that you must proceed according to the well-established rules of evidence. The fact that every document, as I understand the proposal, would, although unchallenged, be subject to all just exceptions to its admissibility as evidence would appear to meet this point.

The recommendation (already carried into effect in patent actions) that the Summons for Directions should be amplified in scope is most valuable. A somewhat similar suggestion appears in my previous paper, but I did not stress the advantage, which I fully recognise, of postponing the summons until after the pleadings are closed. The Society suggest that the summons should be by way of continuation of the present summons for directions and observe that the latter is quite useless. If useless, why not cut it out and restore the rules as to time for delivery of pleadings? Our Society's proposal that the new summons should be heard by the judge who will try the case has been much criticised. It involves the extension to King's Bench cases of the Chancery practice of assigning every case to a named judge from the start. This may mean delay in trial and additional expense. Even Chancery matters are constantly shifted from judge to judge for trial. The total abandonment of assignation in all divisions would not prevent the judges from perusing pleadings in the cases in their lists for the following day. The extended summons for directions should be heard by a master or district registrar. The trial judge should come to the case with an open mind.

It is well said that it is the client, not the solicitor, who briefs fashionable counsel at high fees. Let us hope that the charge against the profession in this respect will not be repeated.

Surprise is expressed that more use is not made of the notice to the other side to admit facts. As Sir Roger Gregory recently pointed out, litigants are at arm's length. They are often obstinate. There is also a natural fear that the admission of even the most obvious fact may prejudice the real point. It is useless to talk of agreement. These attitudes have to be overcome. The extended summons for directions would give the opportunity for the effective exercise of pressure and the resultant extraction of admissions would, as our Society point out, economise time at the trial and reduce the number of witnesses.

All the reports and criticisms disagree about experts. Limit the number, says one. Cut the fees, says another. Put an assessor with the judge, says a third. Maître Dor has pointed out to the Chamber by far the best solution, namely, the French system under which the court appoints one independent expert (in heavy cases three independent experts) to report. On the filing of the report many actions would fall to pieces like a pack of cards and, on actions which went for trial, these experts at least would be spared the temptation of selling their souls to the devil to please a client.

The Bar recommend evidence by affidavit subject to challenge, but only if both parties agree or the judge directs. The Manchester Society agree, but I think that the Chamber's reply that this favours an obstructive or impecunious party is well founded. An affidavit in a Chancery proceeding is an admirable method of presenting undisputed facts. In any contest, however, an affidavit, if unchallenged, may easily cost as much as the attendance of the witness; it may also smother truth which might have been elicited on cross-examination. If the affidavit is challenged the litigant who is unfortunate pays for both the witness and his affidavit. This is hardly economical. A really inexpensive procedure would be to allow a party to supply signed proofs of unimportant witnesses which could be read in their absence if not challenged.

Law Notes has no hesitation in saying that the cause list s the main reason for the dread which the public has of the aw and of the lawyers. I agree, and so evidently does the Chamber, as it declines to drop its suggestion of a business manager of the cause list with legal experience. I know of an originating summons involving but £600 which was in the list for five days last term before it was reached, but I am convinced that a superman could do little or nothing under the existing system which tries to fit the cases to the judges instead of fitting the judges to the cases. I agree that the State and individuals would save money and time (which is also money) to have judges waiting for cases rather than litigants waiting for judges. The list must be made so perfect that, if any case is not called on the first day it is in the paper, the costs of the day of both parties should be paid by the State. It would be but common honesty on the part of the State which has pocketed the hearing fee. The Lord Chancellor and Mr. Justice Roche call for more judges: others plead for longer hours and Saturday sittings. These suggestions, which are as old as the hills, would speed up litigation but would do little to remedy the present scandal in London or at assizes. The difficulty is insuperable, says a legal journal. I disagree. It can be completely remedied by the appointment of Commissioners called up when wanted and remunerated accordingly. I want my readers to visualise that every day in term time angry litigants and witnesses are chafing in the Law Courts at the inefficiency of the legal machine, and that there are counsel within easy call equal in ability to the judges who are sitting. Those counsel would be only too pleased to have the opportunity of acting as Commissioners for the day. There are as good fish in the sea as ever came out of it. Illness of judges during the past year has created such pressure that Commissioners of Assize have been freely appointed, and even at Manchester civil work was taken by a commissioner. It has been said that litigants prefer their cases to be taken by a "pukka" judge. My own experience is that they do not know one judge from another and have a well-grounded belief that the man they see on the bench would not be there unless he possessed exceptional qualifications. I have heard it whispered that sometimes both counsel and litigants have preferred the commissioner to the judge. The suggestion, if adopted, would have an added value in that the ever-present danger of an inefficient man reaching the permanent bench would practically disappear.

Limitation of the right of appeal meets with considerable favour. A great diminution in the number of appeals could be secured and early finality reached if the courts of first instance were stronger. A case presenting any feature of real difficulty, however small the amount involved, should be entitled to a Divisional Court in the first place.

The Manchester Society recommend that the place of trial should be fixed so that minimum travelling expenses will be incurred. The better value of the evidence of a man who is standing on the site where the incidents took place is obvious. Is it too much to hope that in our lifetime all cases which now require plans and models will be tried on the spot at less expense and with far greater efficiency? I know agricultural valuers dealing daily in the fields with heavy claims for tillages. *They* do not pine for courts warmed to seventy degrees.

The Long Vacation is still with us. What would be thought of a great hospital if it put up a notice "This place is closed down for ten weeks. Temporary plasters can be applied for at the side door."

The poor have been provided for by the Poor Persons Procedure and the voluntary work of the profession has received its meed of praise from all manner of people. For the middle classes and business men who have suffered an actionable wrong is provided a Rolls Royce labelled "Justice." Naturally they hesitate to ride in it. They are searching for a reliable Ford which will take them cheaply to the same place. Justice is their "never never land" if such an alternative vehicle is not procurable. It is the duty of our profession to do its utmost to provide it.

Mr. DOUGLAS GARRETT (London) thanked Mr. Chandler very warmly for his kindly attitude to the recommendations of the committee. He thought that the proposal to abolish county courts would prove impracticable in these hard times if the salaries of the new judges were to be on the High Court scale. Although, he said, it was valuable for a judge to come to a case with an open mind, it was more valuable that the judge who heard the interlocutory application should also hear the trial. He disagreed with Mr. Chandler's commendation of the French system of appointing experts; in his experience of commercial and maritime work in foreign courts, the experts were not always independent, and so much depended on their

evidence that the proceedings before them became practically a young trial. He endorsed the suggestion that the right of appeal should be limited, but would not like to abolish the double appeal, except that the work of the Court of Criminal Appeal might well be done by the Court of Appeal.

Mr. CHARLES BARRY (Vice-President) said that the procedure of the High Court would be out of place in the small cases with which the county court was so largely concerned. He thought that a judge ought to deal with the summons for direction.

Mr. HOLTBY asked who—under the proposed new scheme—would deal with that very important part of the registrar's work: deciding how much debtor could pay monthly.

Dr. A. H. COLEY (Birmingham) thought that if the county court became part of the High Court, it would not be difficult to frame rules to deal with its duties. He thought that the problem of reduction of the cost of litigation might be aided by extension of the jurisdiction of the county court. He urged greater rights of audience for solicitors and hoped the Society and the profession would present a united front and concentrate on the policy of extension of county court jurisdiction.

Mr. HOWARD WATSON (Liverpool) said that the salaries of commissioners would reach a high figure, so that the scheme would probably prove impossible financially, even if it were desirable. He thought that a great deal could be attained by simplifying procedure, particularly the interminable interlocutory proceedings. He agreed that the French system was disadvantageous, practically amounting to trial by expert. He suggested that the Treasury might lead the way in economy by reducing their fees, which had steadily increased in recent years.

Mr. C. L. NORDON (London) remarked that rapidity was just as important to the litigant as economy, and suggested that an action should set forth at once what the plaintiff wanted, with all necessary details and a list of relevant documents. The defendant should then deliver his defence and the action should then be ready for inclusion in the list awaiting hearing. He would abolish the writ. He urged that a solicitor should at least be allowed equal right of audience if his counsel was unable to appear, instead of having to indulge in an undignified last-minute rush round the Temple to find another barrister—and then to sit bursting with indignation while the uninstructed counsel completely misrepresented his case.

Mr. S. F. BUTCHER (Bury) said that Manchester was by no means pleased with its commissioners, and urged that the summons for directions should be dealt with by the judge. The scheme depended for its success on the co-operation of the judges; he was afraid the registrars would not be strong enough to deal with the situation. He hoped the time was not far off when only one defence would be allowed; this would save an enormous amount of time and money.

Mr. F. C. STIGANT (Rochester) said that county court procedure was cheap because solicitors had the right of audience, but that they had no encouragement to appear as they actually received less fees than if they briefed counsel, and, moreover, were liable to the client in damages if they made a mess of the case. If the amount of the jurisdiction of the county court went up and no further inducement were given for a solicitor to act, no solicitor would ever appear and the court would cease to be a poor man's court at all.

Mr. CHANDLER, replying, observed that he had recommended that the fee for an advocate in the reconstituted court should be the same, whether he were sclicitor or barrister. The registrar ought to have not only the plaintiff's statement of the defendant's financial position, but also a statement from the defendant.

(To be continued.)

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve the recommendation of the Home Secretary that Marshal of the Air Force the LORD TRENCHARD, G.C.B., D.S.O., be appointed Commissioner of the Police of the Metropolis in succession to General The Viscount Byng of Vimy, G.C.B., G.C.M.G., M.V.O.

The King has been pleased, on the recommendation of the Secretary of State for Scotland, to approve the appointment of Mr. DAVID ALEXANDER DUNCAN, Assistant Clerk of the Bills and Sequestrations in the Court of Session, to be Clerk of the Bills and Sequestrations in the Court of Session in place of Mr. Thomas Swinton Paterson (resigned).

Mr. ARTHUR J. D. ROBINSON, solicitor, Clitheroe, has been appointed Clerk to the Clitheroe Justices.

It is officially announced that the King has been pleased to approve the appointment of Mr. TORICK AMEER ALI, barrister-at-law, as a Puisne Judge of the High Court of Judicature at Calcutta in the vacancy to be created by the retirement, on 27th November, of Mr. Justice Z. R. Z. Suhrawardy.

The Lord Mayor elect (Mr. Alderman Maurice Jenks) is to appoint as his private secretary during the coming mayoralty Mr. T. HARVEY HULL, who is at present principal clerk to the Town Clerk of London, Sir James Bell, solicitor. Mr. Hull thus succeeds Sir William Soulsby in the office of private secretary to the Lord Mayor of London.

Mr. F. D. V. CANT, of the town clerk's department, has been appointed Assistant Solicitor to the Dudley Corporation.

ECONOMY AT THE OLD BAILEY.

At the Central Criminal Court on Tuesday, counsel prosecuting in a case remarked "For reasons of economy prisoner is indicted on one charge only, although there are twenty-three against him."

REOPENING OF THE LAW COURTS.

PROCESSION OF THE JUDGES.

The Michaelmas Law Sittings began on Monday last, when the Law Courts were reopened after the Long Vacation.

A special service was held at Westminster Abbey, which was attended by the Lord Chancellor (Lord Sankey), the majority of the Judges, and a large number of King's Counsel and members of the Junior Bar. Red Mass was said at Westminster Cathedral.

Owing to the national economic position the Lord Chancellor did not give his usual breakfast to the Judges, county court Judges, King's Counsel, and officials.

Before the Judges took their seats at the Law Courts after the services, the usual procession, headed by the Lord Chancellor, along the Central Hall of the Law Courts took place.

In the Court of Appeal, in the presence of the Master of the Rolls and the other Judges, Lord Sankey was sworn in as Lord Chancellor of the National Government.

OLD BAILEY SESSIONS.

The ceremony of appointing the days for holding the sessions for the jurisdiction of the Central Criminal Court for the ensuing year took place at a special session of the Court at the Sessions House, Old Bailey, on Monday last. The Lord Mayor presided and was accompanied on the Bench by Mr. Justice Hawke, Mr. Justice Charles, Mr. Justice Humphreys, Mr. Justice Macnaghten, and Alderman Lieut-Col. Laurie. The Clerk of the Court (Mr. W. W. Nops) announced that the following days had been appointed for holding the sessions:—

1931.—Tuesday, 17th November; Tuesday, 8th December.

1932.—Tuesday, 12th January; Tuesday, 2nd February; Tuesday, 1st March; Tuesday, 5th April; Tuesday, 26th April; Tuesday, 31st May; Tuesday, 28th June; Monday, 18th July; Tuesday, 13th September; Tuesday, 18th October.

TOO MUCH LEGISLATION.

Lord Leverhulme, presiding at an Individualist Bookshop luncheon at the Hotel Victoria on Wednesday, said that he hoped a strong government would be returned united on the necessity of living within our income and of upholding the principles of private enterprise and individual initiative. The country had suffered for a long time from too much legislation, and the nation would gain if a five years' legislative holiday were declared on matters not connected with industrial, monetary, and economic problems. Sir Ernest Benn urged that some badly-needed prescriptions should be prepared for the time when the Doctor's Mandate was secured. He suggested that public assistance should be a disqualification for a vote, that the folly of the fixed price, whether of goods or labour, should be exposed, and that the relative merits of direct and indirect taxation should be reconsidered.

A UNIVERSAL APPEAL.

TO LAWYERS: FOR A POSTCARD OR A GUINEA FOR A MODEL FORM OF BEQUEST TO THE HOSPITAL FOR EPILEPSY AND PARALYSIS, MAIDA VALE, W.9.

INNS OF COURT LECTURES.

During the present Educational Term at the Inns of Court, the Readers and Assistant Readers of the Council of Legal Education will lecture on the subjects of the Bar Examination. The lectures will be delivered in the Hall and Old Hall at Lincoln's Inn. Prospectuses may be obtained from the secretary to the Council of Legal Education, 15, Old-square, Lincoln's Inn, W.C.2.

NATIONAL HEALTH INSURANCE ACTS.

The Minister of Health feels that it is desirable to draw attention to a consolidated volume which has been prepared of the more important decisions given by him, and by his predecessors, the National Health Insurance Commission (England), on questions as to liability to compulsory insurance, or title to voluntary insurance, under the National Health Insurance Acts. The volume covers the period from 1912 until the 31st March, 1931, and contains appendices giving particulars of cases referred to the High Court and of appeals to the High Court and County Courts against the decisions of the Minister or the Insurance Commission, as well as a comprehensive index to the whole volume. Among the later decisions are questions arising out of the interpretation of the new grounds for insurability introduced by the National Health Insurance Act, 1928.

It is hoped that the volume, which can be purchased from H.M. Stationery Office or through the usual agents, will be of considerable assistance to approved society officials, social workers, organisations of employers and workpeople, solicitors, accountants and others concerned with the law of social insurance.

THE MEDICO-LEGAL SOCIETY.

(*President*—The Rt. Hon. LORD RIDDELL.)

An ordinary meeting of the Society will be held at 11, Chandos-street, Cavendish-square, W.1, on Thursday, the 22nd October, 1931, at 8.30 p.m., when a Paper will be read by Dr. D. H. Geffen, Medical Officer of Health, Urban District Council of Enfield, on "Causes of Suicide," which will be followed by a discussion.

Members may introduce guests to the meeting upon production of the member's private card.

ERNEST GODDARD,
BERNARD H. SPILSBURY,
Hon. Secretaries.

7th October, 1931.

DATES OF MEETINGS TO BE HELD DURING SESSION 1931–1932.

Thursday, 22nd October, 1931.
,, 26th November, 1931.
,, 28th January, 1932.
,, 25th February, 1932.
,, 24th March, 1932.
,, 28th April, 1932.
,, 26th May, 1932.
,, 23rd June, 1932.

Members or their friends who may be desirous of contributing Papers are requested to communicate with one of the Hon. Secretaries.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Witness. Part I.	MR. JUSTICE MAUGHAM. Non-Witness.
M'nd'y Oct. 19	Mr. Jones	Mr. More	Mr.*Jones	Mr. Blaker
Tuesday .. 20	Ritchie	Hicks Beach	Hicks Beach	Jones
Wednesday 21	Blaker	Andrews	*Blaker	Hicks Beach
Thursday . 22	More	Jones	Jones	Blaker
Friday 23	Hicks Beach	Ritchie	*Hicks Beach	Jones
Saturday .. 24	Andrews	Blaker	Blaker	Hicks Beach

DATE	GROUP I. MR. JUSTICE BENNETT. Witness. Part II.	MR. JUSTICE CLAUSON. Non-Witness.	GROUP II. MR. JUSTICE LUXMOORE. Witness. Part II.	MR. JUSTICE FARWELL. Witness. Part I.
M'nd'y Oct. 19	Mr.*Hicks Beach	Mr. Andrews	Mr.*Ritchie	Mr. More
Tuesday .. 20	*Blaker	More	*Andrews	*Ritchie
Wednesday 21	*Jones	Ritchie	*More	Andrews
Thursday . 22	Hicks Beach	Andrews	Ritchie	*More
Friday 23	Blaker	More	*Andrews	Ritchie
Saturday .. 24	Jones	Ritchie	More	Andrews

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

VALUATIONS FOR INSURANCE. It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is frequently very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality. 'Phone: Temple Bar 1181-2.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (20th September, 1931) 6%. Next London Stock Exchange Settlement Thursday, 22nd October, 1931.

	Middle Price 14 Oct. 1931.	Flat Interest Yield. £ s. d.	Approximate Yield with redemption £ s. d.
English Government Securities.			
Consols 4% 1957 or after	83	4 16 5	—
Consols 2½%	54	4 12 7	—
War Loan 5% 1929-47	96½	5 3 8	—
War Loan 4½% 1925-45	95	4 14 9	5 0 0
Funding 4% Loan 1960-90	84	4 15 3	4 16 10
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	90	4 8 11	4 11 10
Conversion 5% Loan 1944-64	99	5 1 0	5 1 0
Conversion 4½% Loan 1940-44	94	4 15 9	5 2 9
Conversion 3½% Loan 1961	74	4 14 7	—
Local Loans 3% Stock 1912 or after	62	4 16 9	—
Bank Stock	240	5 0 0	—
India 4½% 1950-55	64½	6 19 6	—
India 3½%	46½	7 10 6	—
India 3%	41½	7 4 7	—
Sudan 4½% 1939-73	89½	5 0 7	5 2 3
Sudan 4% 1974	79½xd	5 0 8	5 4 0
Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.)	79xd	3 15 11	4 11 0
Colonial Securities.			
Canada 3% 1938	86½	3 9 4	5 6 9
Cape of Good Hope 4% 1916-36	92½	4 6 6	5 15 0
Cape of Good Hope 3½% 1929-49	79½	4 8 1	5 6 0
Ceylon 5% 1960-70	92½	5 8 1	5 9 0
Commonwealth of Australia 5% 1945-75	73	6 17 0	6 19 10
Gold Coast 4½% 1956	90	5 0 0	5 4 6
Jamaica 4½% 1941-71	89½	5 0 7	5 2 6
Natal 4% 1937	92½	4 6 6	4 15 0
New South Wales 4½% 1935-1945	55	8 3 8	8 18 6
New South Wales 5% 1945-65	65	7 13 10	7 18 0
New Zealand 4½% 1945	83½	5 7 9	6 7 6
New Zealand 5% 1946	90½	5 10 6	6 0 0
Nigeria 5% 1950-60	97½	5 2 7	5 3 3
Queensland 5% 1940-60	65	7 13 10	8 2 0
South Africa 5% 1945-75	97½	5 2 7	5 2 9
South Australia 5% 1945-75	65	7 13 10	7 18 0
Tasmania 5% 1945-75	67	7 9 3	7 12 6
Victoria 5% 1945-75	65	7 13 10	7 18 0
West Australia 5% 1945-75	70	7 2 10	7 6 0
The prices of Stocks are in many cases nominal and dealings often a matter of negotiation.			
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	63	4 14 6	—
Birmingham 5% 1946-56	99½	5 0 6	5 1 3
Cardiff 5% 1945-65	98½	5 1 6	5 2 0
Croydon 3% 1940-60	67½	4 8 11	5 4 6
Hastings 5% 1947-67	95½	5 4 9	5 5 6
Hull 3½% 1925-55	82½	4 4 10	4 14 6
Liverpool 3½% Redeemable by agreement with holders or by purchase	71½	4 17 11	—
London City 2½% Consolidated Stock after 1920 at option of Corporation	50½	4 19 0	—
London City 3% Consolidated Stock after 1920 at option of Corporation	61½	4 17 7	—
Metropolitan Water Board 3% "A" 1963-2003	59½	5 0 10	—
Do. do. 3% "B" 1934-2003	62½	4 16 0	—
Middlesex C.C. 3½% 1927-47	85½	4 1 10	4 16 0
Newcastle 3½% Irredeemable	71	4 18 7	—
Nottingham 3% Irredeemable	61xd	4 18 4	—
Stockton 5% 1946-66	98½	5 1 6	5 1 10
Wolverhampton 5% 1946-56	99	5 1 0	5 1 6
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	79½	5 0 8	—
Gt. Western Railway 5% Rent Charge	93½	5 6 11	—
Gt. Western Rly. 5% Preference	71½	6 19 10	—
L. & N.E. Rly. 4% Debenture	69½	5 15 2	—
L. & N.E. Rly. 4% 1st Guaranteed	62½	6 8 0	—
L. & N.E. Rly. 4% 1st Preference	46	8 13 10	—
L. Mid. & Scot. Rly. 4% Debenture	72	5 11 1	—
L. Mid. & Scot. Rly. 4% Guaranteed	63½	6 6 0	—
L. Mid. & Scot. Rly. 4% Preference	46	8 13 10	—
Southern Railway 4% Debenture	74	5 8 1	—
Southern Railway 5% Guaranteed	90½	5 10 6	—
Southern Railway 5% Preference	64½	7 15 0	—

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